



New Jersey • PUBLIC
EMPLOYMENT
RELATIONS
COMMISSION
RULES

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TITLE 19
SUBTITLE F

New Jersey Administrative Code
Public Employment Relations
Commission

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New Jersey Administrative Code
TITLE 19. Other Agencies

Public Employment Relations Commission

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William T. Cahill, Governor

Albert E. Bonacci, Director of Administrative Procedure

The New Jersey Administrative Code is an official publication of the State of New Jersey. It contains rules, regulations and other documents filed with the Division of Administrative Procedure pursuant to the Administrative Procedure Act of the Laws of 1968; (N.J.S.A. 52:14B-1 *et seq.*). The New Jersey Administrative Code shall constitute the official instrument of the State for codification of its rules (N.J.A.C. 15:15-1.5). Judicial notice shall be taken of the text of each rule published in the New Jersey Register (N.J.S.A. 52:14B-5(e)).

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The New Jersey Administrative Code may be referenced to as: N.J.A.C. The citation to a particular section in the Code shall include the numerical designations of the title, chapter, subchapter, and section referred to, preceded by the initials N.J.A.C. Example: N.J.A.C. 15:4-3.2.

TITLE 19
OTHER AGENCIES

**SUBTITLE F. PUBLIC EMPLOYMENT RELATIONS
 COMMISSION**

CHAPTER 10

DEFINITIONS

Authority

Unless otherwise expressly noted, all provisions of this Chapter 10 were adopted by the Public Employment Relations Commission pursuant to authority delegated at N.J.S.A. 34:13A-11, and were filed and became effective prior to August 31, 1969.

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SUBCHAPTER 1. DEFINITIONS

19:10-1.1 Definitions

SUBCHAPTER 1. DEFINITIONS

19:10-1.1 Definitions

The following words and terms, when used in this Subtitle shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the New Jersey Employer-Employee Relations Act, Chapter 303, Laws of 1968 (N.J.S.A. 34:13A-1 *et seq.*).

"Arbitration panel" means a roster of arbitrators maintained by the Commission.

"Arbitrator" means a member of the arbitration panel chosen in accordance with these rules and regulations.

"Certification" means the designation by the Executive Director or the Commission of an employee organization as the majority representative of employees in an appropriate unit.

"Commission" means the New Jersey Public Employment Relations Commission.

"Executive Director" means the chief executive officer and administrator of the Division of Public Employment Relations.

"Fact-finder" means the Commission, any member of the Commission or any officer so designated by the Commission.

"Fact-finding panel" means a roster of fact-finders maintained by the Commission.

"Hearing officer" means an officer of the Commission designated to conduct any hearing and to issue a report and recommendations to the Executive Director or the Commission. It shall include a member of the Commission, the Executive Director, and any other officer designated to conduct a hearing.

"Mediation panel" means roster of mediators maintained by the Commission.

"Mediator" means the Commission, its members, employees of the Commission or any officer so designated by the Commission to perform the functions and duties of mediation.

"Officer" means any member, counsel, hearing officer, mediator, fact-finder, election officer, arbitrator, Executive Director or any other individual or employee specifically designated as an officer of the Commission to act on the Commission's behalf. The Commission may delegate to such officer all of the powers conferred upon the Commission in connection with the discharge of the duty or duties so delegated.

"Party" means any person, employee, group of employees, organization or public employer filing a charge, petition, request or application under these rules and regulations; any person, organization or public employer named as a party in a charge, complaint, request, application or petition filed under this Act; or any other person, organization or public employer whose intervention in a proceeding has been permitted or directed by the Commission, Executive Director, or a hearing officer, but nothing herein shall be construed to prevent the Commission, or any designated officer, from limiting any party's participation in the proceedings to the extent of his interest.

"Recognition" means the written acceptance by a public employer of an employee organization as the majority representative of employees in an appropriate unit pursuant to section N.J.A.C. 19:11-1.14 of these rules and regulations.

"Representation proceeding" means a procedure under these rules and regulations for the purpose of determining the majority representative of employees, if any, in an appropriate collective negotiating unit or a question or controversy concerning the representation of public employees for the purpose of collective negotiations.

“Showing interest” means a designated percentage of public employees in an allegedly appropriate negotiating unit, or a negotiating unit determined to be appropriate, who are members of an employee organization or have designated it as their exclusive negotiating representative or have signed a petition requesting an election for certification or decertification of public employee representatives. Such designations shall consist of written authorization cards or petitions, signed and dated by employees, authorizing an employee organization to represent such employees for the purpose of collective negotiations or requesting an election for certification or decertification of public employee representatives; current dues records; an existing or recently expired agreement; or other evidence approved by the Executive Director or the Commission.

CHAPTER 11

REPRESENTATION PROCEDURES

Authority

Unless otherwise expressly noted, all provisions of this Chapter 11 were adopted by the Public Employment Relations Commission pursuant to authority delegated at N.J.S.A. 34:13A-11, and were filed and became effective prior to August 31, 1969.

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SUBCHAPTER 1. PETITIONS FOR PUBLIC EMPLOYEE REPRESENTATIVE

19:11-1.1 Petitions for certification or decertification

(a) Rules concerning who may file are:

1. A petition for certification of public employee representative may be filed by any public employee, group of public employees, any individual or employee organization claiming to be the majority representative of public employees in an appropriate unit.

2. A petition for certification of public employee representative may be filed by a public employer alleging that one or more public employees, group of public employees, individuals or employee organizations have presented to him a claim to be recognized or continue to be recognized as the majority representative and the public employer has a good faith doubt concerning the majority representative of its employees.

3. A petition for decertification of public employee representative may be filed by any employee or group of employees or any individual acting on their behalf alleging that the certified or currently recognized employee representative is no longer the majority representative of such employees.

4. Petitions for clarification or amendment of certification may be filed by the majority representative or public employer.

(b) All petitions shall be in writing and shall be filed with the Executive Director.¹

19:11-1.2 Contents of petition for certification

(a) A petition for certification of public employee representative shall, when filed by a public employee, group of public employees, any individual, employee organization or public employer, contain the following:

1. Name, address, telephone number of the public employer and the person to contact including his title, if known;

2. A description of the collective negotiating unit claimed to be appropriate for the purpose of exclusive representation by the petitioner. Such description shall indicate the general classifications of employees sought to be included and those sought to be excluded and the approximate number of employees in the unit claimed to be appropriate;

3. Date of the request for recognition as majority representative and date such request was declined by the public employer or a statement that no reply has been received;

4. Name, address and telephone number of the recognized or certified exclusive representative, if any, and the date of such certification or recognition and the expiration date of any applicable contract, if known to the petitioner;

¹Forms for filing such petitions will be supplied by the executive Director upon request. Address requests to: State of New Jersey, Public Employment Relations Commission, Trenton, New Jersey 08625.

5. Names, addresses and telephone numbers of any other interested employee organizations, if known to the petitioner;
6. Any other relevant facts;
7. Name and affiliation, if any, of the petitioner and its address and telephone number;
8. The signature of the petitioner's representative, including his title and telephone number; and
9. A petition for certification of public employee representative shall be accompanied by a showing of interest as defined in Section 1.1 (Definitions) of Chapter 10 of this Subtitle of not less than 30 per cent of the employees in the unit alleged to be appropriate. A typewritten alphabetical list of such designations also shall be submitted to the Executive Director.

19:11-1.3 Contents of petition for decertification

(a) A petition for decertification of public employee representative shall contain the following:

1. A statement that the employee representative certified by the Executive Director or the Commission or recognized by the public employer no longer represents a majority of the employees in the collective negotiation unit in which it is currently recognized or certified and such employee organization asserts a claim to be the majority representative of said employees;
2. The petition for decertification of public employee representative also shall contain the information set forth in Section 1.2 (Contents of petition) of this Chapter, except paragraph (a)3 thereof;
3. The petition for decertification shall be accompanied by a showing of interest of not less than 30 per cent of the employees in the unit in which an employee representative has been recognized or certified. A showing of interest shall indicate that the employees no longer desire to be represented for purposes of collective negotiation by the recognized or certified employee representative.

19:11-1.4 Petition for certification filed by a public employer

(a) A petition for certification of public employee representative filed by a public employer shall state that a claim for representation or continued representation has been made by one or more public employees, groups of public employees, individuals or employee organizations and that the public

employer has a good faith doubt concerning the majority representative of its employees.

(b) A petition for certification of representative filed by a public employer shall include all of the information set forth in Section 1.2 (Contents of petitions) of this Chapter except paragraph (a)9 thereof.

19:11-1.5 Petition for clarification of unit or amendment of certification

(a) The majority representative or the public employer may file a petition for clarification of a negotiating unit or amendment of any certification issued by the Executive Director or the Commission.

(b) A petition for clarification or amendment, in addition to setting forth the information required by paragraphs (a)1, and (a)4 through (a)9 of Section 1.2 (Contents of petition for certification) of this Chapter, shall contain the following:

1. A description of the present negotiating unit and the date of the certification or recognition;
2. Proposed clarification or amendment of the unit;
3. A statement by petitioner setting forth reasons as to why clarification or amendment is requested.

19:11-1.6 Number of copies to be filed

Five copies of all petitions listed in Sections 1.2 through 1.5 of this Chapter shall be filed with the Executive Director and copies shall be served simultaneously on all known interest parties and proof of such service shall be furnished to the Executive Director.

19:11-1.7 Validity of showing of interest

The showing of interest submitted pursuant to Section 1.2 (Contents of petition to certification) and 1.3 (Contents of petition for decertification) of this Chapter shall not be furnished to any of the parties. The Executive Director shall determine the adequacy of the showing of interest and such decision shall not be subject to collateral attack at a hearing before a hearing officer.

19:11-1.8 Processing of petition

(a) Upon the filing of any petition the Executive Director shall investigate the petition to determine the facts.

(b) The Executive Director shall determine whether or not a valid question concerning the representation of employees exists in a *prima facie* appropriate unit.

19:11-1.9 Withdrawal or dismissal of petition

(a) If the Executive Director determines after an investigation that the petition has not been timely filed or that no valid question concerning the representation of employees exists in a *prima facie* appropriate unit, he may request the party filing such a petition to withdraw the petition without prejudice or in the absence of such withdrawal, within a reasonable time, he may dismiss the petition.

(b) Such action may be taken by the Executive Director at any time prior to the closing of the case.

19:11-1.10 Posting of notice of petition

(a) After the filing of a representation petition, the Executive Director normally will request the public employer to post a notice to all employees, in places where notices are normally posted affecting the employees in the unit involved in the proceeding, on forms to be furnished by the Executive Director.

(b) Such notices shall set forth:

1. The name of the petitioner;
2. The description of the unit involved; and

3. A statement that all interested parties are to advise the Executive Director in writing of their interest as soon as possible.

(c) The notice shall remain posted for a period of ten days from the date of receipt by the public employer. The public employer shall certify to the Executive Director that the notice has been conspicuously posted for a period of ten days where notices are normally posted and that the notice has not been covered by other material, altered or defaced.

(d) In addition, the public employer shall furnish the Executive Director with the names, addresses and telephone numbers of all employee

organizations which have within the preceding 12 months claimed to represent any of the employees in the requested unit.

(e) The failure of the Executive Director to request or of the public employer to comply with the request of the Executive Director regarding the posting of such notices shall not serve to delay or invalidate any subsequent Commission action which occurs pursuant to the filing of a petition.

As amended, R.1973 d.110, eff. May 10, 1973

See: 5 N.J.R. 61(a), 5 N.J.R. 171(c).

19:11-1.11 Public docket

The Executive Director shall maintain a public docket of all petitions filed with the Commission. Such docket shall contain a copy of the petition but shall not include any showing of interest. The petition shall remain in the public docket until the case is closed.

19:11-1.12 Investigation of petition

(a) The Executive Director shall, after ascertaining the positions of the parties involved in any representation matter, take appropriate measures to resolve expeditiously the question concerning representation.

(b) Such disposition may consist of withdrawal or dismissal as set forth in Section 1.9 (Withdrawal or dismissal of petition) of this Chapter; the conduct of an election in an appropriate unit pursuant to the agreement of all interested parties; the conduct of a hearing and the direction of an election in an appropriate unit; or the dismissal of a petition after a hearing.

19:11-1.13 Intervention

(a) No employee organization will be permitted to intervene in any proceeding to resolve a question concerning the representation of employees unless it has submitted a showing of interest of not less than ten per cent of the employees in the unit involved in the petition or has submitted a current or recently expired agreement with the public employer covering any of the employees involved.

(b) An employee organization seeking to intervene for the purpose of claiming a unit of employees different from that sought by the petitioner shall submit a showing of interest from at least 30 per cent of the employees in the unit it claims to be appropriate or a current or recently expired agreement with the public employer covering such employees.

(c) A motion by an employee organization to intervene in a pending representation proceeding may be made at any time up to and including the opening of a hearing held pursuant to N.J.A.C. 19:11-2.2, or at any time prior to the date of the parties' execution of an agreement for consent election.

(d) A pre-hearing motion to intervene shall be in writing, filed with the Executive Director and served upon the parties. A motion to intervene made at the commencement of a hearing is subject to the provisions of N.J.A.C. 19:14-3.6.

(e) A motion to intervene shall not be deemed to be valid unless it is accompanied by a showing of interest in accordance with the provisions of this Section.

As amended, R.1973 d.110, eff. May 10, 1973

See: 5 N.J.R. 61(a), 5 N.J.R. 171(c)

19:11-1.14 Recognition as exclusive representative

(a) Whenever a public employer has been requested to recognize an employee organization as the exclusive representative of a majority of the employees in an appropriate collective negotiating unit, the public employer and the employee organization may resolve such matters without the intervention of the Commission.

(b) The Commission will accord certain privileges to such recognition as set forth in Section 1.15 (Timeliness of petitions) of this Chapter provided the following criteria have been satisfied prior to the written grant of such recognition by a public employer:

1. The public employer has satisfied himself in good faith, after a suitable check of the showing of interest, that the employee representative is the freely chosen representative of a majority of the employees in an appropriate collective negotiating unit;

2. The public employer has conspicuously posted a notice on bulletin boards, where notices to employees are normally posted, for a period of at least ten consecutive days advising all persons that it intends to grant such exclusive recognition without an election to a named employee organization for a specified negotiating unit;

3. The public employer shall serve written notification upon any employee organizations that have claimed, by a written communication within the year preceding the request for recognition, to represent any of the employees in the unit involved, or any organization with which it has dealt within the year preceding the date of the request for recognition. Such notification shall be made at least ten days prior to the grant of recognition and shall contain the information set forth in paragraph (b)2 of Section 1.14 (Recognitions as exclusive representative) of this Chapter;

4. Another employee organization has not within the ten-day period notified the public employer of a claim to represent any of the employees involved in the collective negotiating unit and has not within such period filed a valid petition for certification of public employee representative with the Executive Director;

5. Such recognition shall be in writing and shall set forth specifically the collective negotiating unit involved.

19:11-1.15 Timeliness of petitions

(a) Where there is no recognized or certified majority representative of the employees, a petition for certification of public employee representative

will be considered timely filed provided there has been no valid election within the preceding twelve-month period in the requested negotiating unit or any subdivision thereof.

(b) Where there is a certified or recognized representative, a petition will not be considered as timely filed if during the preceding 12 months an employee organization has been certified by the Executive Director or the Commission as the majority representative of employees in an appropriate unit or an employee organization has been granted recognition by a public employer pursuant to Section 14 of this Subchapter.

(c) During the period of an existing written agreement containing substantive terms and conditions of employment and having a term of three years or less, a petition for certification of public employee representative or a petition for decertification of public employee representative normally will not be considered timely filed unless:

1. In a case involving employees of the State of New Jersey, any agency thereof, or any State authority, commission or board, the petition is filed not less than 240 days and not more than 270 days before the expiration or renewal date of such agreement;

2. In a case involving employees of a county or a municipality, any agency thereof, or any county or municipal authority, commission or board, the petition is filed not less than 90 days and not more than 120 days before the expiration or renewal date of such agreement;

3. In a case involving employees of a school district, the petition is filed during the period between September 1 and October 15, inclusive, within the last 12 months of such agreement.

(d) For the purposes of determining a timely filing, an agreement for a term in excess of three years will be treated as a three year agreement; an agreement for an indefinite term shall be treated as a one year agreement measured from its effective date.

As amended, R.1973 d.110, eff. May 10, 1973

See: 5 N.J.R. 61(a), 5 N.J.R. 171(c)

SUBCHAPTER 2. ELECTIONS

19:11-2.1 Agreement for consent election

(a) Where one or more employee organizations assert a claim to represent employees in an appropriate unit and a petition for certification of

public employee representative or a petition for decertification of public employee representative has been filed, the parties may stipulate, subject to the approval of the Executive Director, that a secret ballot election shall be conducted by the Commission among the employees in an appropriate collective negotiating unit to determine whether they desire to be represented for purposes of collective negotiations by any or none of the employee organizations involved. The parties to such proceeding shall be the public employer, the petitioner and any intervenors who shall have complied with the requirements set forth in Section 1.13 (Intervention) of this Chapter.

(b) The parties shall stipulate as to the composition of the collective negotiating unit, the eligibility period for participation in the election, the dates, hours and places of the election and the designations on the ballot.

19:11-2.2 Notice of hearing

(a) The Executive Director shall issue a notice of hearing if, after the filing of a valid petition, the petitioner, the public employer, and all intervenors, within the purview of Section 1.13 (Intervention) of this Chapter, are unable to resolve the matter through an agreed-upon method of adjustment approved by the Executive Director.

(b) A notice providing at least ten days notice of hearing shall be served on all interested parties and shall include:

1. A statement of the time, place and nature of the hearing;
2. A statement of the unit claimed to be appropriate;
3. The name of the public employer, petitioner and intervenors, if any;
4. A statement of the legal authority and jurisdiction under which the hearing is to be held;
5. The respective positions of the parties in order to frame, simplify and clarify the issue involved. However, any such material shall not be deemed a part of the record and any party wishing to rely upon them as exhibits shall make an appropriate submission at the hearing.

(c) Hearings under this Section of these rules and regulations are considered investigatory and not adversary. Their purpose is to develop a full and complete factual record upon which the hearing officer may base a meaningful report and recommendation. To accomplish this end the rule of relevancy and materiality are paramount; there will be no burdens of proof and the technical rules of evidence will not apply.

(d) Representation hearings and the procedures following such hearings shall be in accordance with these rules and regulations.

19:11-2.3 Notices of election; improper use of notices

(a) Appropriate notices of election shall be furnished by the Executive Director to the public employer for suitable posting. Such notices shall set forth the details and procedures for an election, the appropriate unit, the eligibility period, the date(s), hours and place(s) of the election and shall contain a sample ballot.

(b) The reproduction of any document purporting to be a copy of the Commission's official ballot, other than one completely unaltered in form and content and clearly marked "sample" on its face, which suggests either directly or indirectly to employees that the Commission endorses a particular choice may constitute grounds for setting aside an election upon objections properly filed.

19:11-2.4 Election procedure

(a) All elections shall be by secret ballot.

(b) Whenever two or more employee organizations are included as choices in an election, any employee organization may request the Executive Director to remove its name from the ballot. The request must be received not later than five days before the date of the election. Such request shall be subject to the approval of the Executive Director, whose decision shall be final; provided, however, that in a proceeding involving a public employer-filed petition or a petition for decertification the employee organization certified, currently recognized, or found to be seeking recognition may not have its name removed from the ballot without giving the aforementioned notice in writing to all parties and the Executive Director, disclaiming any representation interest among the employees in the unit.

(c) Any party may be represented at the polling place(s) by observers of his own selection, subject to such limitations as the Executive Director may prescribe.

(d) Any party or the election officer may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded.

(e) Upon the conclusion of the election, the Executive Director shall cause to be furnished to the parties a tally of ballots.

(f) Within five days after the tally of ballots has been furnished, any party may file with the Executive Director an original and four copies of objections to the conduct of the election or conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Copies of such objections shall be served simultaneously on the other parties by the party filing them, and a statement of service shall be made.

(g) If no objections are filed within the time set forth above, if the challenged ballots are insufficient in number to affect the result of the election, and if no runoff election is to be held, the Executive Director shall forthwith issue to the parties a certification of the results of the election, including certification of representative, where appropriate.

(h) If objections are filed to the conduct of the election or conduct affecting the result of the election, or if the challenged ballots are sufficient in number to affect the result of the election, the Executive Director shall investigate such objections or challenges, or both.

(i) Where objections are filed, or challenges are determinative, the Executive Director shall conduct an investigation and shall, where appropriate, issue a notice of hearing designating a hearing officer to hear the matters alleged and to issue a report and recommendations. The objecting party shall bear the burden of proof regarding all matters alleged in the objections to the conduct of the election or conduct affecting the results of the election.

19:11-2.5 Runoff election

(a) The Executive Director shall conduct a runoff election when an election in which the ballot provided for not less than three choices (for example, at least two representatives and "neither" or "none") results in no choice receiving a majority of the valid ballots cast and any objections filed have been disposed of, as provided herein. Only one runoff election shall be held pursuant to this Section.

(b) Employees who were eligible to vote in the original election and who are in an eligible category on the date of the runoff election shall be eligible to vote in the runoff election.

(c) The ballot in the runoff election shall provide for a selection between the two choices receiving the largest and second largest number of votes.

(d) An inconclusive election is one in which none of the choices on the ballot has received a majority of the valid ballots cast. In the event the number of ballots cast in an inconclusive election in which the ballot provided for a choice among two or more representatives and "neither" or "none" is equally divided among the several choices; or in the event the number of ballots cast for one choice in such election is equal to the number cast for the third choice, the Executive Director shall declare the first election a nullity and shall conduct another election, providing for a selection from among the choices afforded in the original ballot and he shall thereafter proceed in accordance with subsections (a) through (c) of this Section. In the event two or more choices receive the same number of ballots and another choice receives no ballots and there are no challenged ballots that would affect the results of the election, and if all eligible voters have cast valid ballots, there shall be no runoff election and a certification of results of election shall be issued. Only one such further election pursuant to this Section may be held.

(e) Upon the conclusion of the runoff election, the provisions of Section 2.4 (Elections procedure) shall govern, insofar as applicable.

19:11-2.6 Determination of majority representative

The majority representative shall be determined by a majority of the valid ballots cast in the election.

CHAPTER 12

IMPASSES

Authority

Unless otherwise expressly noted, all provisions of this Chapter 12 were adopted by the Public Employment Relations Commission pursuant to authority delegated at N.J.S.A. 34:13A-11, and were filed and became effective prior to August 31, 1969.

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SUBCHAPTER 1. MEDIATION

19:12-1.1 Filing of notice of impasse

(a) In the event that a public employer and a certified or recognized employee organization have failed to achieve an agreement after genuine and sincere efforts through direct negotiation, either the public employer, the

employee organization, or the parties jointly may notify the Executive Director, in writing, of the existence of an impasse and request the assignment of a mediator.

(b) Five copies of the notification shall be filed with the Executive Director, and copies shall be served simultaneously upon all parties to the negotiations.

(c) Proof of such service shall be furnished to the Executive Director.

(d) Such notification and request shall contain the following information:¹

1. The name, address and telephone number of the public employer who is a party to the collective negotiations and its representative to be contacted and his title, if known;

2. The name, address and telephone number of the exclusive representative and its representative to be contacted and his title, if known;

3. A description of the collective negotiation unit including the approximate number of employees in the unit;

4. The dates and duration of negotiation sessions;

5. The termination date of the current agreement, if any;

6. The last date, if any, for the submission of the budget;

7. Whether the request is a joint request;

8. A detailed statement of the facts giving rise to the request, including all issues in dispute.

19:12-1.2 Appointment of a mediator

(a) The Executive Director, or an officer acting on his behalf, either upon his own motion, or upon a request, as set forth in Section 1.1 (Filing of notice of impasse) of this Chapter shall appoint a mediator if he determines, after investigation, that:

1. Mediation is not being resorted to prematurely;

2. The parties have been unable to reach agreement after genuine and sincere efforts through direct negotiation; and

¹Forms for filing such request will be supplied by the Executive Director upon request. Address requests to: State of New Jersey Public Employment Relations Commission, Trenton, New Jersey 08625

3. An impasse does in fact exist concerning the terms and conditions of employment of the employees in the negotiating unit.

(b) The mediator so appointed may be one or more members of the Commission, an officer of the Commission, an employee of the Commission, a member of the Commission's mediation panel, or any other mediator, all of whom shall be considered officers of the Commission for the purpose of assisting the parties to effect a voluntary resolution of the impasse.

(c) The parties may jointly request the assignment of a particular mediator; however, the Commission reserves the authority to assign a mediator of its choice.

19:12-1.3 Mediator's function

(a) The function of a mediator shall be to assist all parties to come to a voluntary agreement. A mediator may hold separate or joint conferences as he deems expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between the parties.

(b) The mediator is to make no public recommendation on any negotiation issue in connection with the performance of his service nor is he to make a public statement or report which evaluates the relative merits of the positions of the parties. He may, however, advise the parties that he is of the opinion that the invocation of fact-finding procedures with recommendations for settlement would be useful in resolving the impasse.

19:12-1.4 Confidential information

(a) Information disclosed by a party to a mediator in the performance of his mediation functions shall not be divulged voluntarily or by compulsion.

(b) All files, records, reports, documents or other papers received or prepared by a mediator while serving in such capacity shall be classified as confidential.

(c) The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by him, on behalf of any party to any cause pending in any type of proceeding.

19:12-1.5 Mediator's report to the Executive Director

(a) The mediator shall, as soon as possible, submit one or more confidential reports to the Executive Director, which shall, in general, be limited to the following:

1. A statement of the dates and duration of the meetings which have been held and their participants;
2. A brief description of the unresolved issues which existed at the beginning of the mediation effort;
3. A statement of the issues which have been resolved through mediation;
4. A statement of issues which are still unresolved, if any;
5. A recommendation as to whether or not the Executive Director should invoke fact-finding with recommendations for settlement.

(b) The confidential report(s) submitted by any mediator may be utilized by the Executive Director or the Commission in considering whether or not fact-finding with recommendations for settlement should be invoked. Such reports shall not be considered in any other proceedings before the Executive Director or the Commission or be made available or disclosed to any party or any other tribunal.

SUBCHAPTER 2. FACT-FINDING**19:12-2.1 Invocation of fact-finding**

(a) After the appointment of a mediator, and upon his report of a failure to resolve the impasse by mediation, the Executive Director may invoke fact-finding with recommendations for settlement.

(b) The Executive Director may invoke fact-finding when a resolution of the impasse has not been reached within 15 days of the appointment of a mediator, provided, however, the Executive Director may extend or limit the period of mediation at the request of the parties and/or the mediator for good cause shown.

(c) The public employer or the employee organization, involved in an impasse affecting terms and conditions of employment of the employees in the collective negotiations unit, may individually or jointly request the

Executive Director to invoke fact-finding with recommendations for settlement. Joint requests are encouraged. Five copies of the request for fact-finding shall be filed with the Executive Director, signed by the party or parties filing the request, and shall be served upon all other parties to the negotiation impasse. Proof of such service shall be furnished to the Executive Director. The request shall contain the following information:²

- (1) The name, address and telephone number of the public employer who is a party to the collective negotiations, its representative to be contacted and his title, if known;
- (2) The name, address and telephone number of the exclusive representative, its representative to be contacted and his title, if known;
- (3) The name of the mediator;
- (4) The number and duration of mediation sessions;
- (5) The date of the last mediation effort;
- (6) The unresolved issues to be submitted to a fact-finder;
- (7) The names and addresses to which the fact-finder's bill is to be sent.

19:12-2.2 Appointment of fact-finder(s)

(a) Upon the invocation of fact-finding by the Executive Director, he shall submit simultaneously to each party to the dispute, as soon as possible, an identical list of names of at least five fact-finders.

(b) Each party to the dispute shall have seven days from the date of mailing the list in which to examine said list, cross off any two names to which he objects, number the remaining names indicating the order of his preference, and return the list to the Executive Director.

(c) When any party fails to return the list within the specified time. all persons named therein shall be deemed acceptable to that party.

(d) The Executive Director shall appoint a fact-finder or fact-finders giving recognition to the designated orders of preference, if any. If the appointed fact-finder(s) declines, or is unable to serve, or if for any other reason the appointment cannot be made from the submitted list, the Executive Director shall have the power to make the appointment of a fact-finder(s), not previously rejected by either party, without submission of any additional list.

(e) The panel of fact-finders submitted by the Executive Director shall not include the mediator appointed pursuant to Section 2.1 (Appointment of

²Forms for filing such request will be supplied by the Executive Director upon request. Address requests to: State of New Jersey, Public Employment Relations Commission, Trenton, New Jersey 08625

a mediator) of this Chapter unless the parties mutually agree in writing requesting such mediator to serve as the fact-finder.

19:12-2.3 Inquiries; investigations; hearings

(a) The fact-finder(s) appointed by the Executive Director shall, within ten days after his appointment, meet with the parties or their representatives; make inquiries and investigations, hold hearings, which shall not be public unless all parties and the fact-finder(s) agree to have them public; and take such other steps as he deems appropriate.

(b) For the purpose of such hearings, investigations and inquiries, the fact-finder(s) shall have the authority and power to subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath and, in connection therewith, to issue subpoenas *duces tecum* and to require the production and examination of any governmental or other books or papers relating to any matter under investigation by or in issue before him.

(c) If the dispute is not settled prior thereto, the fact-finder(s) shall make findings of fact and recommend the terms of settlement within 15 days of his appointment and not later than five days after the close of a fact-finding hearing, unless an extension of time for good cause shown has been granted by the Executive Director.

(d) Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately and to the Executive Director.

(e) The findings and recommendations of the fact-finder(s) may be made public by the Executive Director if the impasse is not resolved within five days after the receipt of the recommendations of the fact-finder(s) by the parties.

(f) If the parties are able to reach agreement on the matters in dispute during such five-day period, the findings of fact and recommendations for settlement shall not be made public unless the parties mutually agree to do so.

(g) The cost for the services of the fact-finder, including *per diem* per diem expenses, if any, and actual and necessary travel and subsistence expenses, and any other necessary expenses of the fact-finding proceeding shall be borne equally by the parties. All individually incurred costs shall be borne by the party incurring them.

19:12-2.4 Impasse; settlement thereof

(a) In the event that the findings of fact and recommendations are made public and the impasse continues, the Commission shall take whatever steps it deems expedient to effect a settlement of the impasse including the reconvening of the fact-finding inquiry, which shall be public, to:

1. Determine the efforts of the parties to effect a voluntary resolution of the impasse;
2. Determine the nature and extent of unresolved matters;
3. Determine other methods to effect a resolution of the impasse; and
4. Determine the causes for the continuation of the impasse.

19:12-2.5 Costs of fact-finding inquiry

All of the costs of the aforementioned fact-finding inquiry of the Commission shall be borne by the parties equally.

19:12-2.6 Release of findings and recommendations

The findings and recommendations of the Commission shall be released to appropriate newspapers of general circulation.

19:12-2.7 Conduct of hearing

The hearing may be conducted by one or more persons or officers of the Commission, designated by the Commission to conduct such hearing and make a recommendation to the Commission.

19:12-2.8 Payment of fact-finders

(a) The cost of all fact-finding proceedings pursuant to the Act will be submitted to the Executive Director, in triplicate, by the fact-finders(s). The Executive Director shall then transmit such bills to the parties for payment.

(b) The joint obligation of the parties to share the cost of fact-finding shall not be excused by a fact-finder's use of mediation techniques to reduce the issues in dispute, to effect a resolution of the impasse or the failure to issue a fact-finder's report due to a resolution of the impasse.

SUBCHAPTER 3. ARBITRATION

19:12-3.1 Appointment of an arbitrator

(a) The Executive Director may, upon the request of either party to an agreement containing a provision providing for arbitration of unresolved grievances, submit simultaneously to each party to the dispute, as soon as possible, an identical list of names of at least five arbitrators.

(b) Each party to the dispute shall have seven days from the date of mailing the list in which to examine said list, cross off any two names to which he objects, number the remaining names indicating the order of his preference and return the list to the Executive Director.

(c) When any party fails to return the list within the time specified, all persons named therein shall be deemed acceptable to that party.

(d) The Executive Director shall appoint an arbitrator giving recognition to the designated order of preference, if any.

(e) If the appointed arbitrator declines, or is unable to serve, or if, for any other reason the appointment cannot be made from the submitted list, the Executive Director shall have the power to make the appointment of an arbitrator not previously rejected by either party, without submission of any additional list.

(f) Parties to any agreement may, by the terms of their agreement, provide an alternative method for the selection of one or more arbitrators. In such instance the rules contained herein shall apply only in the event of the failure to select an arbitrator by the alternative method.

19:12-3.2 Cost of arbitration

The cost of such arbitration shall be borne by the parties in accordance with their agreement and not by the Commission.

NEW JERSEY ADMINISTRATIVE CODE

CHAPTER 13

RESERVED

Authority

Unless otherwise expressly noted, all provisions of this Chapter were adopted by the Public Employment Relations Commission pursuant to authority delegated at N.J.S.A. 34:13A-11 and were filed and became effective prior to August 31, 1969. Revisions were filed which deleted the text of Chapter 13 in its entirety and became effective September 4, 1973, as R.1973 d.248. See: 5 N.J.R. 358(c).

NEW JERSEY ADMINISTRATIVE CODE

CHAPTER 14

HEARINGS

Authority

Unless otherwise expressly noted, all provisions of this Chapter 14 were adopted by the Public Employment Relations Commission pursuant to authority delegated at N.J.S.A. 34:13A-11, and were filed and became effective prior to August 31, 1969.

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SUBCHAPTER 1. GENERAL PROVISIONS

19:14-1.1 Who shall conduct; to be public unless otherwise ordered

(a) The hearing for the purpose of taking evidence, pursuant to Section 1.11 of Chapter 11 and Section 1.7 of Chapter 13 of this Title, shall be conducted by a hearing officer designated by the Executive Director, unless the Commission or any member thereof presides. Such hearings shall be public unless otherwise ordered, for good cause, by the Executive Director, the Commission or the hearing officer.

(b) An official reporter shall make the only official transcript of such proceedings.

(c) Copies of the official transcript will not be provided by the Executive Director or the Commission.

(d) Copies of the transcript may be purchased by arrangement with the official reporter or examined in the Commission's offices in Trenton during normal working hours.

SUBCHAPTER 2. HEARING OFFICER

19:14-2.1 Duties and powers of hearing officer

(a) It shall be the duty of the hearing officer to inquire fully into the facts as they relate to the matter before him.

(b) With respect to cases assigned to him, between the time he is designated and the transfer of the case to the Executive Director or the Commission, the hearing officer shall have the authority, subject to these rules and regulations and the Act, to:

1. Administer oaths and affirmations;
2. Grant applications for subpoenas;
3. Rule upon petitions to quash subpoenas;
4. Rule upon offers of proof and receive relevant evidence;
5. Take or cause depositions to be taken whenever the ends of justice would be served thereby;
6. Limit lines of questioning or testimony which are repetitive, cumulative or irrelevant;

7. Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper question;

8. Hold conferences for the settlement or simplification of the issues by consent of the parties;

9. Dispose of procedural requests, motions, or similar matters which shall be made part of the record of the proceeding, including motions referred to the hearing officer by the Executive Director and motions to amend pleadings, also to recommend dismissal of cases or portions thereof, and to order hearings reopened prior to issuance of the hearing officer's report and recommendations;

10. Call, examine and cross-examine witnesses and to introduce into the record documentary or other evidence;

11. Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

12. Take any other action necessary under the foregoing and authorized by the rules and regulations of the Commission.

19:14-2.2 Unavailability of hearing officer

In the event the hearing officer designated to conduct the hearing becomes unavailable, the Executive Director or the Commission may designate another hearing officer for the purpose of further hearing or issuance of a report and recommendation on the record as made, or both.

SUBCHAPTER 3. GENERAL PROCEDURES

19:14-3.1 Rights of parties

(a) Any party shall have the right to appear at such hearing in person, by counsel, or by other representative, to call, examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent permitted by the hearing officer; and provided further, that five copies of documentary evidence shall be submitted.

(b) The hearing officer at his discretion may permit a reduced number of copies of documentary evidence for good cause shown.

19:14-3.2 Rules of evidence

(a) The parties shall not be bound by rules of evidence whether statutory, common law, or adopted by the rules of court.

(b) All relevant evidence is admissible, except as otherwise provided.

(c) A hearing officer may, in his discretion, exclude any evidence or offer of proof if he finds that its probative value is substantially outweighed by the risk that its admission will either necessitate undue consumption of time or create substantial danger of undue prejudice or confusion.

(d) The hearing officer shall give effect to the rules of privilege recognized by law.

(e) Every party shall have a right to present his cause by oral and documentary evidence and to submit rebuttal evidence.

(f) Every party and the hearing officer shall have the right to examine and cross-examine as may be required for a full and true disclosure of the facts.

19:14-3.3 Burden of proof

A charging party in asserting a violation of the Act and these rules and regulations shall have the burden of proving the allegations of the charge by a preponderance of the evidence.

19:14-3.4 Stipulation of fact

(a) In any proceeding an agreed statement of facts may be introduced into the record with respect to any issue.

(b) An agreed statement of facts may be accepted by the Executive Director for a decision without a hearing.

(c) The acceptance of an agreed statement of facts by the Executive Director may be deemed a waiver of a right to hearing.

19:14-3.5 Objection to conduct of hearing

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing accompanied by a short statement of the grounds for such objection, and included in the record.

(b) No such objection shall be deemed waived by further participation in the hearing. Such objection shall not stay the conduct of the hearing.

(c) Automatic exceptions will be allowed to all adverse rulings.

(d) The Executive Director shall, in his discretion, have the authority, for good cause shown, to review any objection to the rulings of a hearing officer or the conduct of a hearing. The aforementioned review by the Executive Director shall not stay the conduct of the hearing unless otherwise ordered by the Executive Director.

19:14-3.6 Motions before or after hearing

(a) All motions, other than those made during a hearing, shall be made in writing to the Executive Director, shall briefly state the relief sought, and shall be accompanied by affidavits setting forth the grounds for such motion.

(b) The moving party shall serve a copy of all motion papers on all other parties and shall within three days thereafter, file with the Executive Director the original and four copies thereof with proof of service.

(c) Answering affidavits, if any, must be served on all parties and the original thereof, together with four copies and proof of service, shall be filed with the Executive Director within five days after service of the moving papers, unless the Executive Director directs otherwise.

(d) The Executive Director may rule upon all motions filed with him or he may refer the motion to the hearing officer.

(e) The Executive Director may decide to hear oral argument or hear testimony thereon, in which case he shall notify the parties of such fact and of the time and place of such argument or for the taking of such testimony.

(f) All such motions, rulings and orders thereon shall be part of the record of the proceedings.

19:14-3.7 Review of rulings

Unless expressly authorized by the Commission, rulings by a hearing officer or by the Executive Director shall not be appealed directly to the

Commission, but shall be considered by the Commission only upon the filing of a request for review in accordance with Section 2.1 of Chapter 15 (Request for review) of this Title.

19:14-3.8 Waiver of objections

An objection not duly urged before a hearing officer shall be deemed waived unless the failure to urge such objection shall be excused by the Executive Director or the Commission because of extraordinary circumstances.

19:14-3.9 Filing of brief and oral argument at hearing

(a) Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing.

(b) Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the hearing officer who may fix a reasonable time for such filing, but not in excess of 21 days from the close of the hearing.

(c) Requests for further extensions of time for good cause shown shall be made to the Executive Director.

(d) No request will be considered unless received at least three days prior to the expiration of the time fixed for the filing of briefs or proposed findings and conclusions, unless expressly authorized by the Executive Director.

(e) Notice of the request for any extension shall be served simultaneously on all other parties, and proof of service shall be furnished.

(f) Five copies of any brief or proposed findings and conclusions shall be filed with the hearing officer, and copies shall be served simultaneously on the other parties, and a statement of such service shall be furnished.

19:14-3.10 Continuance or adjournment

At the discretion of the hearing officer, the hearing may be continued from day to day, or adjourned to a later date or to a different place, by announcement thereof at the hearing by the hearing officer, or by other appropriate notice.

19:14-3.11 Misconduct

Misconduct of an aggravated character at a hearing before a hearing officer, Executive Director or the Commission, when engaged in by an attorney or other representative of a party, shall be ground for suspension or disbarment by the Commission from further practice before it after due notice and hearing.

SUBCHAPTER 4. HEARING OFFICER'S REPORT**19:14-4.1 Submission of the hearing officer's report to the Executive Director**

(a) After completion of the hearing, or upon the consent of the parties prior to the conclusion of the hearing, the hearing officer shall transfer the case to the Executive Director including the hearing officer's report and recommendations and record.

(b) The hearing officer's report and recommendations, where appropriate, should include the remedial action to be taken and notices to be posted.

(c) The record shall include the petition or charge, notice of hearing, motions, rulings, orders, official transcript of the hearing, stipulations, exceptions, documentary evidence and any briefs or other documents submitted by the parties.

(d) The Executive Director shall cause the report and recommendations of the hearing officer to be served promptly on all parties to the proceeding.

(e) Five copies of any exceptions to the hearing officer's report and recommendations may be filed by any party with the Executive Director within seven days after service of the report and recommendations, provided, however, that the Executive Director may for good cause shown extend the time for filing such exceptions.

(f) Copies of such exceptions and any supporting briefs shall be served simultaneously on all other parties, and a statement of such service shall be furnished to the Executive Director.

19:14-4.2 Filing of exceptions to hearing officer's report

(a) Exceptions to a hearing officer's report shall:

1. Set forth specifically the questions of procedure, fact, law or policy to which exceptions are taken;
2. Identify that part of the hearing officer's report to which objection is made;
3. Designate by precise citation of page the portions of the record relied on, state the grounds for the exceptions, and include the citation of authorities unless set forth in a supporting brief.

(b) Any exception to a ruling, finding, conclusion, or recommendation which is not specifically urged shall be deemed to have been waived.

(c) Any exception which fails to comply with the foregoing requirements may be disregarded.

19:14-4.3 Briefs in support of exceptions

(a) Any brief in support of exceptions shall contain no matter not included within the scope of the exceptions and shall contain, in the order indicated, the following:

1. A concise statement of the case containing all that is material to the consideration of the questions presented;
2. A specification of the questions involved and to be argued;
3. The argument, presenting clearly the points of fact and law relied on in support of the position taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(b) Answering briefs to the exceptions, and cross-exceptions and supporting briefs, may be filed upon application at the discretion of the Executive Director or the Commission.

19:14-4.4 Action by the Executive Director

(a) After considering the hearing officer's report and recommendations, the record and any exceptions filed, the Executive Director shall issue his decision.

(b) In cases alleging a violation of the Act and these rules and regulations and upon finding such violation the Executive Director shall order the respondent to cease and desist from conduct violative of the Act

and these rules and regulations and may require the respondent to take such affirmative corrective action as he deems appropriate to effectuate the policies of the Act and these rules and regulations.

19:14-4.5 Compliance with decisions and orders of the Executive Director

(a) Where remedial action is ordered, compliance with decisions and orders of the Executive Director or the Commission shall be achieved by the respondent reporting to the Executive Director, within a specified period, that the required remedial action has been taken.

(b) Where the Executive Director finds that the required remedy has not been effected, he shall refer the matter to the Commission for appropriate action.

CHAPTER 15

EXECUTIVE DIRECTOR; CASE PROCEDURES

Authority

Unless otherwise expressly noted, all provisions of this Chapter 15 were adopted by the Public Employment Relations Commission pursuant to authority delegated at N.J.S.A. 34:13A-11, and were filed and became effective prior to August 31, 1969.

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SUBCHAPTER 1. EXECUTIVE DIRECTOR

19:15-1.1 Duties and powers of the Executive Director

(a) It shall be the duty of the Executive Director to investigate all petitions, requests, charges and all other matters coming before the Commission. If it appears to the Executive Director that there is reasonable cause to believe that:

1. A question of representation exists; or

19:15-2.1

EXECUTIVE DIRECTOR; CASE PROCEDURES

2. A mediator should be assigned to assist in collective negotiations; or
3. A fact-finder should be assigned to make recommendations for settlement; or
4. An arbitrator should be assigned pursuant to the collectively negotiated agreement; or
5. A hearing should be held on a charge alleging a violation of the Act and these rules and regulations, he shall take appropriate action on behalf of the Commission.

(b) Whenever the Executive Director deems it necessary in order to effectuate the purposes of the Act or to avoid unnecessary costs or delay, he may order any proceeding to be transferred to or consolidated with any other proceeding which may have been instituted or he may in his discretion sever proceedings which previously have been consolidated.

(c) A decision or order of the Executive Director in representation matters and proceedings involving a violation of the Act and these rules and regulations shall set forth findings of fact, conclusions of law, decision, order, or direction. The decision, order or direction of the Executive Director shall be a final administrative determination subject to the filing of a request for review with the Commission.

SUBCHAPTER 2. REQUEST FOR REVIEW OF CASE

19:15-2.1 Request for review

(a) Within ten days of the date of delivery to the parties of record of the Executive Director's decision, order or direction, any aggrieved party may file a request for review with the Commission.

(b) A request for review shall be submitted in ten copies to the Commission and shall be printed or otherwise legibly duplicated. A copy shall be served on the parties of record and the Executive Director. A statement of service shall be filed with the request for review. The filing of a request for review with the Commission shall not operate, unless otherwise ordered by the Commission, as a stay of any action taken, ordered or directed by the Executive Director.

19:15-2.2 Grounds for granting a request for review

(a) The Commission will grant a request for review only where compelling reasons exist therefor. Accordingly, a request for review may be granted only upon one or more of the following grounds:

1. That a substantial question of law or policy is raised concerning the interpretation or administration of the Act or these rules and regulations;
2. That the Executive Director's decision on a substantial factual issue is clearly erroneous on the record and such error prejudicially affects the rights of a party;
3. That the conduct of the hearing or any ruling made in connection with the proceeding may have resulted in prejudicial error; and/or
4. That there are compelling reasons for reconsideration of an important Commission rule or policy.

19:15-2.3 Contents of request for review; timely presentment of facts

(a) A request for review must be a self-contained document enabling the Commission to rule on the basis of its contents without the necessity of recourse to the record.

(b) With respect to grounds described in paragraph 2 of Section 2.2 (Grounds for granting a request for review) of this Chapter, and other grounds where appropriate, said request must contain a summary of all evidence and rulings bearing on the issues together with page citations from the official transcript and a summary of argument.

(c) A request may not raise any issue or allege any facts not timely presented to the Executive Director or the hearing officer, unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be so presented.

19:15-2.4 Statements in opposition to a request for review

Any party may, within seven days after the last day on which the request must be filed, file with the Commission ten copies of a statement in opposition thereto, which shall be duplicated and served in accordance with the requirements of Section 2.1 (Request for review) of this Chapter.

19:15-2.5 Waiver of right to request review

(a) The parties may, at any time, waive their right to request review. Failure to request review shall preclude such parties from re-litigating, in any subsequent proceeding, any issue which was, or could have been raised in the proceeding.

(b) An order denying a request for review shall constitute the final administrative determination of the Commission.

SUBCHAPTER 3. TRANSFER OF CASE TO COMMISSION**19:15-3.1 Stay of decision; filing of briefs with the Commission;
Commission consideration**

(a) The granting of a request for review shall not stay the Executive Director's decision unless otherwise ordered by the Commission.

(b) Within seven days after issuance of an order granting review the appellants and other parties may file ten copies of a brief with the Commission, which shall be duplicated and served in accordance with the requirements of Section 2.1 (Request for review) of this Chapter.

(c) A statement of such service shall be filed simultaneously with the Commission.

(d) Such briefs may be reproductions of those previously filed with the Executive Director and/or other briefs which shall be limited to the issues raised in the request for review.

(e) Where review has been granted, the Commission will consider the entire record in the light of the grounds relied on for review.

(f) Any request for review may be withdrawn with the permission of the Commission at any time prior to the issuance of the decision of the Commission thereon.

19:15-3.2 Transfer of case to Commission

(a) In any case in which it appears to the Executive Director that the proceeding raises questions which should be decided by the Commission, he

may, at any time, issue an order, to be effective after the close of the hearing and before decision, transferring the case to the Commission for decision.

(b) Such an order may be served on the parties upon the record of the hearing.

19:15-3.3 Filing exceptions with the Commission

(a) If any case is transferred to the Commission for decision after the parties have filed exceptions with the Executive Director, the parties may, within such time after service of the order transferring the case as is fixed by the Executive Director, file with the Commission ten copies of the exceptions previously filed with the Executive Director.

(b) If the case is transferred to the Commission before the time expires for filing of exceptions with the Executive Director and before the parties have filed exceptions, such exceptions shall be filed as set forth above and served in accordance with Section 2.1 (Request for review) of this Chapter within the time set by the Executive Director.

(c) Requests for extension of time in which to file exceptions shall be filed in writing with the Commission and copies thereof shall be served simultaneously on the other parties and the Executive Director.

(d) Such requests must be received by the Commission not later than three days before the date such exceptions are due.

19:15-3.4 Decision by the Commission

Upon transfer of the case to the Commission, the Commission shall proceed upon the record, either to decide the issues referred to it or to review the decision of the Executive Director. It shall affirm or reverse the Executive Director, in whole or in part, or make such other disposition of the matter as it deems appropriate.

19:15-3.5 Transfer to Commission on its own motion

The Commission may, at any time, on its own motion, transfer a case to itself for appropriate action.

CHAPTER 16

SUBPOENAS

Authority

Unless otherwise expressly noted, all provisions of this Chapter 16 were adopted by the Public Employment Relations Commission pursuant to authority delegated at N.J.S.A. 34:13A-11, and were filed and became effective prior to August 31, 1969.

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SUBCHAPTER 1. GENERAL PROVISIONS

19:16-1.1 Issuance of subpoena

The Executive Director or hearing officer may issue subpoenas to require the attendance of witnesses in this State and the production of books and papers at a hearing held under the provisions of these rules and regulations.

19:16-1.2 Application for subpoena

(a) A party may file a written application for subpoena with the Executive Director before the opening of a hearing, or with a hearing officer at the hearing.

(b) The application for subpoena need not name the witness or the books and papers sought.

(c) Notice of an application for subpoena need not be communicated to the parties.

(d) The Executive Director or hearing officer shall furnish all subpoenas requested.

19:16-1.3 Failure to comply with subpoena

(a) No person served with a subpoena issued by the Executive Director or a hearing officer, as the case may be, for the purposes aforesaid, shall refuse or neglect to appear or testify or to produce books and papers relevant to such investigation, inquiry or hearing as commanded in such subpoena without the timely filing of a petition to quash a subpoena with the Executive Director or the hearing officer.

(b) A failure to comply with, or neglect of, a subpoena issued by the Executive Director or hearing officer pursuant to Section 2.1 (Duties and powers of the hearing officer) of Chapter 14 of this Title may be certified by the Executive Director to a court of competent jurisdiction for an order of compliance.

19:16-1.4 Fees

(a) The fees for witnesses for attendance and travel shall be paid from appropriations made to the Division of Public Employment Relations to those witnesses subpoenaed by the Executive Director or the hearing officer on his own motion.

(b) The fees for witnesses for attendance and travel shall be paid by the party requesting the subpoena.

SUBCHAPTER 2. PETITION TO QUASH

19:16-2.1 Petition to quash

(a) A petition to quash a subpoena may be filed with the Executive Director or hearing officer not later than five days from the date of service of the subpoena.

(b) The Executive Director or hearing officer shall give notice of the filing of a petition to quash to the applicant for subpoena.

19:16-2.2 Ruling on petition to quash

(a) The Executive Director or hearing officer may quash a subpoena on the ground that the subpoena does not reasonably relate to any matter under investigation, inquiry or hearing; or the subpoena does not describe with sufficient particularity the evidence sought or that the evidence sought from the witness is privileged under the law or these rules and regulations.

(b) The Executive Director or hearing officer shall make a statement as to the basis for his ruling.

19:16-2.3 Timeliness of petition to quash

A failure to file a timely petition to quash shall bar the filing of a subsequent petition to quash a subpoena.

19:16-2.4 Inclusion in the record

An aggrieved party may request that the petition to quash a subpoena, the answer thereto and the Executive Director's or hearing officer's statement of the basis for his ruling, as the case may be, be made a part of the record.

CHAPTER 17

SERVICE AND FILING OF PAPERS

Authority

Unless otherwise expressly noted, all provisions of this Chapter 17 were adopted by the Public Employment Relations Commission pursuant to authority delegated at N.J.S.A. 34:13A-11, and were filed and became effective prior to August 31, 1969.

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SUBCHAPTER 1. GENERAL PROVISIONS

19:17-1.1 Time for filing papers

(a) In computing any period of time prescribed by or allowed by these rules and regulations or by order of the Commission or officer conducting the proceeding, the day of the act, event, or default after which the designated period of time begins to run, shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, or a legal holiday. When the period of time prescribed, or allowed is less than seven days, intermediate Saturdays, Sundays and legal holidays shall be excluded from the computations.

(b) Regarding additional time after served by mail, whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after service of a notice or other paper upon him, and the notice or paper is served on him by mail, three days shall be added to the prescribed period, provided, however, that three days shall not be added if any extension of such time may have been granted.

(c) Regarding extension of time, the Commission, Executive Director or officer having authority to dispose of the matter, may, for good cause shown, extend any time prescribed in these rules and regulations.

(d) When these rules and regulations require the filing of any paper, such document must be received by the Commission or the officer or agent designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted.

19:17-1.2 Form of documents

(a) Documents other than correspondence shall clearly show the title of the proceeding and the docket number, if any.

(b) All documents, correspondence, and papers filed prior to hearing shall be filed with the Executive Director or the Commission. During the course of the hearing, all matters shall be filed with the hearing officer or fact-finder(s) conducting the hearing. After the close of the hearing, all matters shall be filed with the Executive Director or the Commission unless the hearing officer or fact-finder(s) shall have made other provisions. Copies shall be served simultaneously on all interested parties. Proof of service shall be furnished.

(c) Except as otherwise provided in these rules and regulations, any documents or papers shall be filed with four copies in addition to the original. All matters filed with the Executive Director or the Commission shall be printed, typed, or otherwise legibly duplicated on letter size paper (8½ inch by 11-inch); carbon copies of typewritten matter will be accepted only if they are clearly legible.

(d) The original of each document filed shall be signed by an attorney or representative of record for the party, or, by the party himself, or by an officer of the party and shall contain the address and telephone number of the person signing it.

19:17-1.3 Service of pleading and other process; proof of service

(a) Notices of hearings, decisions, orders and other process or papers may be served personally or by registered or certified mail or by telegraph and proof of service established by the verified return of the individual serving the same, setting forth the manner of such service, return post office receipt or telegraph receipt.

(b) All papers except charges, representation petitions and papers relating to subpoenas, shall be served upon all counsel of record and upon parties not represented by counsel or upon their agents designated by them or by law, and upon the Executive Director or the Commission, or its designated officer or agent or upon the fact-finder(s), where appropriate. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(c) The party or person serving the papers or process shall submit simultaneously to the Executive Director, or the individual conducting the proceeding, a written statement of such service; failure to file a statement of service shall not affect the validity of the service.

CHAPTER 18

ENFORCEMENT

Authority

Unless otherwise expressly noted, all provisions of this Chapter 18 were adopted by the Public Employment Relations Commission pursuant to authority delegated at N.J.S.A. 34:13A-11, and were filed and became effective prior to August 31, 1969.

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19:18-1.2 Temporary restraining orders

SUBCHAPTER 1. ENFORCEMENT OF THE ACT

19:18-1.1 Enforcement of the provisions of the Act and these rules and regulations

In any case wherein it is found, after a hearing, that the Act and these rules and regulations have been violated and the respondent has refused to comply with a final decision and order of the Executive Director or of the Commission, the Commission may institute proceedings before any court of competent jurisdiction for the enforcement of such order and for such appropriate temporary or final relief as may be necessary.

19:18-1.2 Temporary restraining orders

The Commission may apply to a court of competent jurisdiction for a temporary restraining order, interlocutory injunction and other temporary or permanent relief to enjoin substantial and irreparable harm to a charging party alleging a violation of the Act in a proceeding subject to these rules and regulations.

CHAPTER 19

CONSTRUCTION OF RULES

Authority

Unless otherwise expressly noted, all provisions of this Chapter 19 were adopted by the Public Employment Relations Commission pursuant to authority delegated at N.J.S.A. 34:13A-11, and were filed and became effective prior to August 31, 1969.

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SUBCHAPTER 1. GENERAL PROVISIONS

19:19-1.1 Rules to be liberally construed

(a) Whenever the Executive Director or the Commission finds that unusual circumstances or good cause exist and that strict compliance with the terms of these rules and regulations will work an injustice or unfairness, it shall construe these rules and regulations liberally to prevent injustices and to effectuate the purposes of the law.

(b) When an act is required or allowed to be done at or within a specified time the Executive Director or the Commission may at any time, in its discretion, order the period altered where it shall be manifest that strict adherence will work surprise or injustice or interfere with the proper effectuation of the Act.

19:19-1.2 Application of rules and regulations

Any valid action by parties prior to the effective date of the rules and regulations will not be held invalid because of a failure to comply with the procedural requirements set forth herein.

19:19-1.3 Effective date

These rules and regulations and statement of procedure shall take effect on August 29, 1969.

19:11-2.7 Eligibility list

(a) In all representation elections conducted pursuant to this Subchapter, unless otherwise directed by the executive director, the public employer is required to file with the executive director an election eligibility list, consisting of an alphabetical listing of the names of all eligible voters together with their last known mailing addresses and job titles. In order to be timely filed, the eligibility list must be received by the executive director no later than ten days prior to the date of the election. The executive director shall make the eligibility list immediately available to all parties to the election. The executive director shall not grant an extension of time within which to file the eligibility list except in extraordinary circumstances.

(b) Failure to comply with the requirements of this Section shall be grounds for setting aside the election whenever proper objections are filed pursuant to N.J.A.C. 19:11-2.4(f) (Election procedure). Additionally, the executive director may, in the exercise of his reasonable discretion, issue a subpoena or direction requiring the production of the eligibility list, and in the event of noncompliance therewith may institute appropriate enforcement proceedings pursuant to R. 1:9-6 (Enforcement of subpoena of public officer or agency).

(c) Action of the executive director pursuant to this Section shall not be reviewable under Subchapter 2 of Chapter 15 of these rules (Request for review of case).

RULES CHANGES EFFECTIVE MAY 24, 1974

19:11-1.12 Investigation of petition; disposition

(a) After a petition has been filed under this Subchapter, if no agreement for consent election has been reached pursuant to Section 19:11-2.1 (Agreement for consent election) the Executive Director shall conduct a further investigation of the matters and allegations set forth therein. The petitioner, the public employer, and any intervenor(s) shall present documentary and other evidence, as well as statements of position, relating to the matters and allegations set forth in the petition.

(b) After the investigation of such petition the Executive Director shall either:

1. Request the petitioner to withdraw the petition, or in the absence of withdrawal, dismiss the petition, pursuant to Section 19:11-1.9 (Withdrawal or dismissal of petition); or
2. Issue a decision dismissing the petition, if it appears to the Executive Director that there is not reasonable cause to believe that a valid question concerning representation exists in an appropriate unit; or
3. Issue a decision directing an election in an appropriate unit, if it appears to the Executive Director that there is reasonable cause to believe that a valid question concerning representation exists in an appropriate unit, that the policies of the Act will be effectuated thereby, and that an election will reflect the free choice of the employees in the appropriate unit; or
4. Take whatever other measures as the Executive Director may deem appropriate under the circumstances.

(c) Action by the Executive Director pursuant to Subsection (b) of this Section may be either on the basis of the administrative investigation or on the basis of a hearing conducted pursuant to Section 19:11-2.2 (Notice of hearing). A hearing shall be conducted:

1. If it appears to the Executive Director that substantial and material factual issues exist which, in the exercise of his reasonable discretion, he determines may more appropriately be resolved after a hearing; or
2. If it appears to the Executive Director that the particular circumstances of the case are such that, in the exercise of his reasonable discretion, he determines that a hearing will best serve the interests of administrative convenience and efficiency.

19:11-2.2 Notice of hearing

(a) The Executive Director shall issue a notice of hearing under the circumstances set forth in Subsection (c) of Section 19:11-1.12 (Investigation of petition; disposition).

(b) A notice providing at least ten days notice of hearing shall be served on all interested parties and shall include:

1. A statement of the time, place and nature of the hearing;
2. A statement of the unit claimed to be appropriate;
3. The name of the public employer, petitioner and intervenors, if any;
4. A statement of the legal authority and jurisdiction under which the hearing is to be held;

5. The respective positions of the parties in order to frame, simplify and clarify the issue involved. However, any such material shall not be deemed a part of the record and any party wishing to rely upon them as exhibits shall make an appropriate submission at the hearing.

(c) Hearings under this Section of these rules and regulations are considered investigatory and not adversary. Their purpose is to develop a full and complete factual record upon which the Executive Director or the Commission may discharge their duties under Section 8 of the Act. To accomplish this end the rule of relevancy and materiality are paramount; there will be no burdens of proof and the technical rules of evidence will not apply.

(d) Representation hearings and the procedures following such hearings shall be in accordance with these rules and regulations.

19:11-2.4 Election procedure

(a) All elections shall be by secret ballot.

(b) Whenever two or more employee organizations are included as choices in an election, any employee organization may request the Executive Director to remove its name from the ballot. The request must be received not later than five days before the date of the election. Such request shall be subject to the approval of the Executive Director, whose decision shall be final; provided, however, that in a proceeding involving a public employer-filed petition or a petition for decertification the employee organization certified, currently recognized, or found to be seeking recognition may not have its name removed from the ballot without giving the aforementioned notice in writing to all parties and the Executive Director, disclaiming any representation interest among the employees in the unit.

(c) Any party may be represented at the polling place(s) by observers of his own selection, subject to such limitations as the Executive Director may prescribe.

(d) Any party or the election officer may challenge, for good cause, the eligibility of any person to participate in the election. The ballots of such challenged persons shall be impounded.

(e) Upon the conclusion of the election, the Executive Director shall cause to be furnished to the parties a tally of ballots.

(f) Within five days after the tally of ballots has been furnished, any party may file with the Executive Director an original and four copies of objections to the conduct of the election or conduct affecting the results of the election, which shall contain a short statement of the reasons therefor. Such filing must be timely whether or not the challenged ballots are sufficient in number to affect the results of the election. Copies of such objections shall be served simultaneously on the other parties by the party filing them, and a statement of service shall be made.

(g) If no objections are filed within the time set forth above, if the challenged ballots are insufficient in number to affect the result of the election, and if no runoff election is to be held, the Executive Director shall forthwith issue to the parties a certification of the results of the election, including certification of representative, where appropriate.

(h) If objections are filed to the conduct of the election or conduct affecting the result of the election, or if the challenged ballots are sufficient in number to affect the result of the election, the Executive Director shall investigate such objections or challenges, or both. All parties shall present documentary and other evidence, as well as statements of position, relating to the objections and/or challenged ballots.

(i) Where objections are filed, or challenges are determinative, the Executive Director shall conduct an investigation and shall, where appropriate, issue a notice of hearing designating a hearing officer to hear the matters alleged and to issue a report and recommendations. The objecting party shall bear the burden of proof regarding all matters alleged in the objections to the conduct of the election or conduct affecting the results of the election.

19:14-1.1 Who shall conduct; to be public unless otherwise ordered

(a) The hearing for the purpose of taking evidence, pursuant to Section 19:11-2.2 (Notice of hearing) and Section 19:11-2.4 (Election procedure) shall be conducted by a hearing officer designated by the Executive Director, unless the Commission or any member thereof presides. Such hearings shall be public unless otherwise ordered, for good cause, by the Executive Director, the Commission or the hearing officer.

(b) An official reporter shall make the only official transcript of such proceedings.

(c) Copies of the official transcript will not be provided by the Executive Director or the Commission.

(d) Copies of the transcript may be purchased by arrangement with the official reporter or examined in the Commission's offices in Trenton during normal working hours.

19:14-2.1 Duties and powers of hearing officer

(a) It shall be the duty of the hearing officer to inquire fully into the facts as they relate to the matter before him.

(b) With respect to cases assigned to him, between the time he is designated and the transfer of the case to the Executive Director of the Commission, the hearing officer shall have the authority, subject to these rules and

regulations and the Act, to:

1. Administer oaths and affirmations;
2. Grant applications for subpoenas;
3. Rule upon petitions to quash subpoenas;
4. Rule upon offers of proof and receive relevant evidence;
5. Take or cause depositions to be taken whenever the ends of justice would be served thereby;
6. Limit lines of questioning or testimony which are repetitive, cumulative or irrelevant;
7. Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper question;
8. Hold conferences for the settlement or simplification of the issues by consent of the parties;
9. Dispose of procedural requests, motions, or similar matters which shall be made part of the record of the proceeding, including motions referred to the hearing officer by the Executive Director and motions to amend pleadings, also, in cases where a report and recommendations shall issue pursuant to Section 19:14-4.1 (Submission of the hearing officer's report to the Executive Director), to recommend dismissal of cases or portions thereof, and to order hearings reopened prior to issuance of the hearing officer's report and recommendations;
10. Call, examine and cross-examine witnesses and to introduce into the record documentary or other evidence;
11. Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;
12. Take any other action necessary under the foregoing and authorized by the rules and regulations of the Commission.

19:14-4.1 Submission of the hearing officer's report to the Executive Director

(a) After completion of the hearing, or upon the consent of the parties prior to the conclusion of the hearing, the hearing officer shall transfer the case to the Executive Director including the hearing officer's report and recommendations and record, provided, however, that report and recommendations shall issue only in those cases where the Executive Director has so directed. The Executive Director shall require such report and recommendations if he determines that the proceeding is one in which the legal rights, duties, obligations, privileges, benefits or other legal relations of specific parties are required by constitutional right or by statute to be determined by the Commission after opportunity for a hearing. Additionally, the Executive Director may require such report and recommendations if, in the exercise of his reasonable discretion, he determines that the interests of administrative convenience and efficiency will be best served thereby.

(b) The hearing officer's report and recommendations, where appropriate, should include the remedial action to be taken and notices to be posted.

(c) The record shall include the petition or charge, notice of hearing, motions, rulings, orders, official transcript of the hearing, stipulations, exceptions, documentary evidence and any briefs or other documents submitted by the parties.

(d) The Executive Director shall cause the report and recommendations of the hearing officer to be served promptly on all parties to the proceeding.

(e) Five copies of any exceptions to the hearing officer's report and recommendations may be filed by any party with the Executive Director within seven days after service of the report and recommendations, provided, however, that the Executive Director may for good cause shown extend the time for filing such exceptions.

(f) Copies of such exceptions and any supporting briefs shall be served simultaneously on all other parties, and a statement of such service shall be furnished to the Executive Director.

CHAPTER 14

UNFAIR PRACTICE PROCEEDINGS

SUBCHAPTER 1. CHARGE

* * *

19:14-1.5 Amendment: Withdrawal; Dismissal

(a) The Commission or its named designee may permit the charging party to amend such charge at any time upon such terms as may be deemed just. Filing, service, and proof of service of such amended charge shall conform to the provisions of these rules relating to the original charge. [Any charge may be withdrawn only with the consent of the Commission or its named designee, and upon such withdrawal any complaint based thereon shall be dismissed and the case closed.]

(b) An unfair practice proceeding and any complaint issued therein shall be dismissed and the case closed if the charging party files a notice of withdrawal of the charge at any time subsequent to the filing of the charge and prior to service by the respondent of an answer to the complaint or of a motion for summary judgment, whichever first occurs. Unless otherwise stated in the notice of withdrawal, the dismissal is without prejudice.

(c) Except as provided by subsection (b) hereof, a charge may be withdrawn by the charging party, and any complaint based thereon dismissed and the case closed, only with the consent of the Commission or its named designee. Unless otherwise provided by the Commission or its named designee, a withdrawal and dismissal under this subsection is without prejudice.

19:14-1.6 [Investigation] Processing of Case

(a) Upon the filing of such charge, the Commission or its named designee [shall cause an investigation to be conducted into the matters and allegations set forth therein. The charging party, the respondent, and any intervenor(s) shall

present documentary and other evidence, as well as statements of position, relating to the matters and allegations set forth in such charge. The charging party shall have the burden of proffering sufficient evidence to support a prima facie finding of unfair practice.] will normally assign the case to a staff member for processing. All parties to the case will be notified of such assignment and will be requested to submit to such staff member within a reasonable period of time:

(1) An executed copy of any current or recently expired contract between the parties; and

(2) A written statement of position explaining why the allegations contained in the charge, if true, would or would not constitute unfair practices on the part of the respondent.

(b) In the course of processing the case, the assigned staff member may request the parties to submit, within a reasonable period of time, briefs setting forth detailed arguments concerning all relevant legal issues pertaining to the case.

(c) In the course of processing the case, the assigned staff member may cause an exploratory conference or conferences to be held with the parties, either individually or jointly, for the purpose of clarifying the issues and of exploring the possibility of voluntary resolution and settlement of the case. Upon notification of any such exploratory conference, the party or parties so notified shall attend such conference, either in person or by authorized representative.

[19:14-1.7 Investigatory Conference]

[During the course of the investigation conducted pursuant to N.J.A.C. 19:14-1.6 (Investigation), the Commission or its named designee may cause an investigatory conference to be held, which conference shall be attended by all of the parties, either in person or by authorized representative.]

SUBCHAPTER 2. COMPLAINT WITH NOTICE OF HEARING

19:14-2.1 Contents; Service

After a charge has been filed and processed, if it appears to the Commission or its named designee [prima facie] that the [respondent has engaged or is engaging in an unfair practice] allegations of the charging party, if true, may constitute unfair practices on the part of the respondent, and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues, the Commission or its named designee shall issue and cause to be served on all parties a formal complaint [in the name of the Commission stating the specific unfair practice charged and] including a notice of hearing before a hearing examiner at a stated time and place. The complaint with notice of hearing shall [also] contain:

(a) [A clear and concise description of the facts which are claimed to constitute unfair practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed.] The allegations of the charging party and a statement of the portion or portions of the Act alleged to have been violated;

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held; and

(c) A statement of the time and place of any pre-hearing conference

to be held pursuant to N.J.A.C. 19:14-6.2 (Pre-Hearing Conference).

Upon its own motion or upon proper cause shown, the Commission or its named designee may extend the date of such hearing and of any such pre-hearing conference.

19:14-2.2 Amendments; [Withdrawal] Dismissal

(a) Any such complaint may be amended [at any time] by the Commission or its named designee [upon such terms as may be deemed just. Any such complaint may be withdrawn before the hearing by the Commission or its named designee on its own motion.] to conform to the allegations set forth in any amended charge thereafter filed by the charging party.

(b) Any such complaint shall be dismissed under the circumstances set forth in subsections (b) and (c) of N.J.A.C. 19:14-1.5 (Amendment; Withdrawal; Dismissal).

19:14-2.3 Refusal to Issue [or Reissue]; Appeal

If, after a charge has been [investigated] processed, [either prior or subsequent to any investigatory conference held pursuant to N.J.A.C. 19:14-1.7 (Investigatory Conference),] the Commission or its named designee declines to issue a complaint, [or having withdrawn a complaint pursuant to N.J.A.C. 19:14-2.2 (Amendment, Withdrawal), declines to reissue it,] the parties shall be so advised in writing, accompanied by a simple statement of the procedural or other grounds for such action. The charging party may obtain a review of such action by the Commission's named designee, if any, by filing an original and nine copies of an appeal with the Commission within ten days from the service of the notice of such refusal to issue [or reissue]. A copy shall be served simultaneously upon all other parties, and proof of service shall be filed with the Commission. An appeal must be a self-contained document enabling the Commission to rule on the basis of its contents. An appeal may not allege any facts not previously presented

unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be so presented. Any party may file a statement in opposition to an appeal within five days from the service of the appeal. Such statement in opposition shall be filed and served in like manner as the appeal. The Commission may sustain the refusal to issue [or reissue] a complaint, stating the grounds of its affirmance, or may direct that further action be taken. The Commission's determination shall be served on all the parties.

SUBCHAPTER 3. ANSWER

19:14-3.1 Time for Filing; Contents; Form

The respondent shall, within ten days from the service of the complaint, file an answer thereto. Upon its own motion or upon proper cause shown, the Commission or its named designee may extend the time within which the answer shall be filed. The respondent shall specifically admit, deny or explain each of the [facts alleged] charging party's allegations set forth in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation not specifically denied or explained, unless the respondent shall state that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown. The answer shall be in writing and signed, and either shall be sworn to before a person authorized by the laws of this State to administer oaths or shall contain the following dated certification immediately preceding the signature of the person signing it: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment."

* * *

SUBCHAPTER 4. MOTIONS

19:14-4.1 Where to file

All motions [for an extension of the date of the hearing, for an extension of time within which the answer shall be filed, or for leave to intervene,] made subsequent to the filing of the charge and prior to the hearing [,] shall be filed in writing with the Commission or its named designee [.] , except that [All] all motions for summary judgment made subsequent to the issuance of the complaint and prior to the hearing shall be filed in writing with the Commission. All motions made at the hearing, or subsequent to the hearing but prior to transfer of the case to the Commission, shall be made in writing to the hearing examiner, or stated orally on the record. All motions made subsequent to transfer of the case to, and while it is pending before, the Commission shall be filed in writing with the Commission.

CHAPTER 14

UNFAIR PRACTICE PROCEEDINGS

SUBCHAPTER 9. INTERIM RELIEF [New]

19:14-9.1 Application By Order to Show Cause

(a) Upon the filing of an unfair practice charge or during the pendency of an unfair practice proceeding, the charging party may apply to the Commission or its named designee for an order requiring the respondent to show cause why specified interim relief should not be granted pending the disposition of the unfair practice proceeding. The order to show cause shall not, however, include any temporary restraints against the respondent unless the respondent has either been given notice of the application and consents thereto or it appears from specific facts shown by affidavit or other verified pleading that immediate and irreparable damage will probably result to the charging party before notice can be served or informally given and a hearing had thereon. If the order to show cause includes temporary restraints and was issued without notice to the respondent, provision shall be made therein that the respondent shall have leave to move for the dissolution or modification of the restraints on two days' notice or on such other notice as the Commission or its named designee fixes in the order. The order may further provide for the continuation of the restraints until the further order of the Commission or its named designee. The order shall be returnable within such time as the Commission or its named designee fixes, unless within such time the Commission or its named designee on good cause shown extends the time.

(b) The charging party shall serve the order to show cause and any supporting affidavits upon the respondent at least ten days prior to the return date and in the manner prescribed by N.J.A.C. 19:17-1.3 (Service of Pleading and Other Process; Proof of Service), unless the Commission or its named designee orders a shorter or longer time or other manner of service. If the order to show cause

Issued upon the filing of the unfair practice charge, a copy of such charge shall be served simultaneously with the order and supporting affidavits.

19:14-9.2 Briefs

(a) By no later than five days prior to the return date of the order to show cause, unless otherwise ordered by the Commission or its named designee, the charging party shall file with the Commission or its named designee an original and four copies of his brief and appendix, together with proof of service of a copy thereof upon the respondent. The brief shall explain clearly the nature of the proceeding, the interim relief the charging party seeks and why he is entitled thereto. It may, for purposes of clarity, summarize the unfair practice charge, any other pleadings, and other undisputed papers or records which do not appear in the appendix.

(b) By no later than two days prior to such return date, unless otherwise ordered by the Commission or its named designee, the respondent shall file with the Commission or its named designee an original and four copies of his answering brief and appendix, together with proof of service of a copy thereof upon the charging party. The answering brief shall set forth with equal explicitness the grounds of opposition, annexing an appendix containing copies of any papers relied on which are not in the charging party's appendix. If no answering brief is filed the application may be considered to be unopposed.

19:14-9.3 Hearing on Return Date

A hearing shall be conducted on the return date of the order to show cause and on the return date of the respondent's motion to dissolve or modify the temporary restraints. The parties shall have the right to present oral argument, and oral testimony may be taken in the discretion of the hearer(s). The Commission

shall conduct such hearings unless it shall have designated one of its members or officers to act on its behalf, in which case such designation shall be deemed to be a delegation to such designee of authority to render a final decision on behalf of the Commission.

19:14-9.4 Decision; Enforcement

(a) A final decision in proceedings under this Subchapter shall be in writing and shall include findings of fact and conclusions of law. Any order granting an injunction and any restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the unfair practice charge or other pleading or document, the act or acts sought to be restrained; and shall apply to only such parties to the unfair practice proceeding and such of their officers, agents, employees, and attorneys, and such persons in active concert or participation with them, as receive actual notice of the order by service in the manner prescribed by N.J.A.C. 19:17-1.3.

(b) Pursuant to N.J.S.A. 34:13A-5.4(f) the Commission shall have the power to apply to the Appellate Division of the Superior Court for an appropriate order enforcing any order of the Commission issued under this Subchapter.

19:14-9.5 Construction and Relaxation

The rules in this Subchapter shall be construed to secure a just determination, simplicity in procedure, fairness in administration, the elimination of unjustifiable expense and delay, and the effectuation of the purposes of the Act. Any rule may be relaxed or dispensed with if strict adherence to it would result in an injustice or would not effectuate the purposes of the Act.

EMERGENCY RULES ADOPTED BY THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
ON JANUARY 16, 1975 TO BE EFFECTIVE
AS OF JANUARY 20, 1975

CHAPTER 12 - NEGOTIATIONS AND IMPASSE PROCEDURES
CHAPTER 13 - SCOPE OF NEGOTIATIONS PROCEEDINGS
CHAPTER 14 - UNFAIR PRACTICE PROCEEDINGS

(N.J.A.C. Title 19, Subtitle F)

NOTICE CONCERNING EMERGENCY RULES

On January 20, 1975 various amendments to the New Jersey Employer-Employee Relations Act became effective. Commencing on that date, among other things:

1. The Public Employment Relations Commission has the authority to prevent a public employer or a public employee organization from engaging in an "unfair practice".
2. The Commission has the authority to determine whether or not a disputed subject is "within the scope of collective negotiations".
3. The Commission must develop rules to regulate the time that negotiations are to commence, as well as the time that mediation and fact-finding procedures are to be instituted, so that the parties will have full opportunity to reach an agreement before the public employer's "required budget submission date".

In order to implement the above amendments the Commission has adopted emergency rules effective as of January 20, 1975, for inclusion in Title 19, Subtitle F of the New Jersey Administrative Code.

Chapter 12 of Subtitle F shall now be entitled Negotiations and Impasse Procedures. The pre-existing Chapter 12, entitled Impasses, has been deleted, except that Subchapter 3 thereof, entitled Arbitration, has been renumbered as Subchapter 5, and Sections 19:12-3.1 through 19:12-3.4 accordingly renumbered as 19:12-5.1 through 19:12-5.4, as follows:

SUBCHAPTER 5. ARBITRATION

- 19:12-5.1 Function of the Commission
- 19:12-5.2 Request for Submission of Panel
- 19:12-5.3 Appointment of an Arbitrator
- 19:12-5.4 Cost of Arbitration

Internal references to Section numbers shall conform to the above renumbering.

Chapter 13 of Subtitle F, previously reserved for use, shall now be entitled Scope of Negotiations Proceedings.

Chapter 14 of Subtitle F shall now be entitled Unfair Practice Proceedings. The pre-existing Chapter 14, entitled Hearings, has been renumbered as Chapter 14A, and Section 19:14-1.1 et seq. accordingly renumbered as Section 19:14A-1.1 et seq.

Effective as of January 20, 1975 the Commission has delegated to Jeffrey B. Tener all of the duties and powers conferred upon the "Executive Director" in the Commission's Rules, and has named Mr. Tener as its designee for the purposes of all duties and powers conferred upon "the Commission or its named designee" in Chapters 12, 13 and 14 of the Rules. Accordingly all references to the "Executive Director" or to "the Commission or its named designee" shall be deemed to refer to Mr. Tener until further notice.

The full text of new Chapters 12, 13 and 14 follows. These emergency rules will be in effect until the Commission shall have completed a comprehensive revision of its entire series of rules, including the adoption of final rules with respect to the subject matters covered by the aforesaid emergency rules. The Commission intends to conduct a formal public hearing prior thereto, to be announced at a later date.

CHAPTER 12

NEGOTIATIONS AND IMPASSE PROCEDURES

SUBCHAPTER 1. PURPOSE OF PROCEDURES

19:12-1.1 Purpose of Procedures

SUBCHAPTER 2. COMMENCEMENT OF NEGOTIATIONS

19:12-2.1 Commencement of Negotiations

SUBCHAPTER 3. MEDIATION

19:12-3.1 Initiation of Mediation

19:12-3.2 Appointment of Mediator

19:12-3.3 Mediator's Function

19:12-3.4 Mediator's Confidentiality

19:12-3.5 Mediator's Report

SUBCHAPTER 4. FACT-FINDING

19:12-4.1 Initiation of Fact-Finding

19:12-4.2 Appointment of Fact-Finder

19:12-4.3 Fact-Finder's Function

CHAPTER 12

NEGOTIATIONS AND IMPASSE PROCEDURES

SUBCHAPTER 1. PURPOSE OF PROCEDURES

19:12-1.1 Purpose of Procedures

N.J.S.A. 34:13A-5.4(c) provides that the Commission shall adopt such rules as may be required to regulate the time of commencement of negotiations and of institution of impasse procedures so that there will be full opportunity for negotiations and the resolution of impasses prior to required budget submission dates. Accordingly, the provisions of this Chapter establishing a time-table for the commencement of negotiations, mediation and fact-finding are intended to create mandatory standards with respect to public sector negotiations utilizing the public employer's required budget submission date as a definitive reference point. The provisions of this Chapter will also accommodate the parties to a collective negotiations relationship who have established an earlier negotiations time-table by mutual agreement.

CHAPTER 13

SCOPE OF NEGOTIATIONS PROCEEDINGS

SUBCHAPTER 1. NATURE OF PROCEEDINGS

19:13-1.1 Nature of Proceedings

SUBCHAPTER 2. INITIATION OF PROCEEDINGS

19:13-2.1 Who May File

19:13-2.2 Contents of Petition for Scope of Negotiations Determination

SUBCHAPTER 3. PROCEDURE

19:13-3.1 "Petitioner" and "Respondent"

19:13-3.2 Intervention

19:13-3.3 Briefs

19:13-3.4 Request for Evidentiary Hearing

19:13-3.5 Evidentiary Hearings

19:13-3.6 Oral Argument

19:13-3.7 Final Determination

SUBCHAPTER 2. COMMENCEMENT OF NEGOTIATIONS

19:12-2.1 Commencement of Negotiations

(a) The parties to a collective negotiations agreement shall commence negotiations for a successor agreement, or in the case of an agreed reopener provision shall commence negotiations pursuant to such reopener provision, no later than 120 days prior to the public employer's required budget submission date. The term "required budget submission date" shall refer to the first budget implementing the successor agreement or the agreement pursuant to the reopener provision, as the case may be. In circumstances where the Commission has not determined the public employer's required budget submission date, the public employer shall notify the employee representative in writing of the required budget submission date no later than 150 days prior to such date. The foregoing provisions shall not preclude the parties from agreeing to the automatic renewal of the collective negotiations agreement unless either party shall have notified the other party of its intention to terminate or modify the agreement, nor shall it preclude the parties from establishing by mutual agreement an earlier date for the commencement of negotiations.

(b) Any different or contrary provision in the parties' agreement notwithstanding, the party initiating negotiations shall, no later than 15 days prior to the commencement date of negotiations required by this Section or any earlier commencement date agreed to by the parties, notify the other party in writing of its intention to commence negotiations on such date, and shall simultaneously file with the Commission a copy of such notification.

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(c) Nothing in this Section shall be construed to abrogate or alter obligations of parties to newly established collective negotiations relationships, whether created by recognition or by certification.

SUBCHAPTER 3. MEDIATION

19:12-3.1 Initiation of Mediation

(a) Whenever the parties to collective negotiations which have or should have commenced pursuant to the provisions of N.J.A.C. 19:12-2.1 (Commencement of Negotiations) shall fail to achieve an agreement by 90 days prior to the public employer's required budget submission date, and neither party shall have requested the appointment of a mediator pursuant to the provisions of subsection (b) below, the Commission or its named designee shall appoint a mediator.

(b) In other circumstances, in the event that a public employer and a certified or recognized employee representative have failed to achieve an agreement through direct negotiation, either the public employer, the employee representative, or the parties jointly, may notify the Commission or its named designee, in writing, of the existence of an impasse and request the appointment of a mediator. An original and four copies of such notification and request shall be filed, and shall be signed and dated and shall contain the following information:

(1) The name, address and telephone number of the public employer who is a party to the collective negotiations and its representative to be contacted and his title, if known;

(2) The name, address and telephone number of the employee representative and its representative to be contacted and his title, if known;

* A blank form for filing such notification and request will be supplied upon request. Address requests to: Public Employment Relations Commission, Trenton, New Jersey 08625.

- (3) A description of the collective negotiations unit including the approximate number of employees in the unit;
- (4) The dates and duration of negotiation sessions;
- (5) The termination date of the current agreement, if any;
- (6) The public employer's required budget submission date;
- (7) Whether the request is a joint request; and
- (8) A detailed statement of the facts giving rise to the request, including all issues in dispute, and a statement that the parties have failed to achieve an agreement.

Upon receipt of the aforementioned notification and request, the Commission or its named designee shall appoint a mediator if it is determined after investigation that mediation is not being resorted to prematurely, that the parties have been unable to reach agreement through direct negotiation, and that an impasse does in fact exist in negotiations concerning the terms and conditions of employment of the affected employees.

19:12-3.2 Appointment of Mediator

The mediator appointed pursuant to this Subchapter may be a member of the Commission, an officer or employee of the Commission, a member of the Commission's mediation panel, or any other mediator, all of whom shall be considered officers of the Commission for the purpose of assisting the parties to effect a voluntary settlement. The parties may jointly request the appointment of a particular mediator, but the Commission or its named designee shall have the express reserved authority to appoint a mediator without regard

to the parties' joint request if such is deemed to best effectuate the purposes of the Act. If an appointed mediator is unable to serve or if for any reason he cannot proceed pursuant to the appointment, another mediator shall be appointed. The appointment of a mediator pursuant to this Subchapter shall not be reviewable under Chapter 17 of these rules (Request for Review).

19:12-3.3 Mediator's Function

The function of a mediator shall be to assist all parties to come to a voluntary agreement. A mediator may hold separate or joint conferences as he deems expedient to effect a voluntary, amicable and expeditious adjustment and settlement of the differences and issues between the parties. In the absence of an agreement between the parties, the mediator, at any time after his appointment, may recommend to the Commission or its named designee that the invocation of fact-finding would be useful in resolving the impasse, and that fact-finding procedures should be invoked.

19:12-3.4 Mediator's Confidentiality

Information disclosed by a party to a mediator in the performance of his mediation functions shall not be divulged voluntarily or by compulsion. All files, records, reports, documents or other papers received or prepared by a mediator while serving in such capacity shall be classified as confidential. The mediator shall not produce any confidential records of, or testify in regard to, any mediation conducted by him, on behalf of any party to any cause pending in any type of proceeding, including but not limited to

unfair practice proceedings under Chapter 14 of these rules.

19:12-3.5 Mediator's Report

The mediator shall submit one or more confidential reports to the Commission or its named designee which shall, in general, be limited to the following:

- (a) A statement of the dates and duration of the meetings which have been held and their participants;
- (b) A brief description of the unresolved issues which existed at the beginning of the mediation effort;
- (c) A statement of the issues which have been resolved through mediation;
- (d) A statement of issues which are still unresolved, if any;
- (e) A recommendation as to whether or not the Commission or its named designee should invoke fact-finding with recommendations for settlement.

The confidential report(s) submitted by the mediator may be utilized by the Commission or its named designee in considering whether or not fact-finding with recommendations for settlement should be invoked. Such reports shall not be considered in any other proceedings before the Commission or be made available or disclosed to any party or any other tribunal.

SUBCHAPTER 4. FACT-FINDING

19:12-4.1 Initiation of Fact-Finding

(a) Whenever the parties to collective negotiations which have or should have commenced pursuant to the provisions of N.J.A.C. 19:12-2.1 (Commencement of Negotiations) shall fail to achieve an agreement by 60 days prior to the public employer's required budget submission date, and neither party shall have requested the appointment of a fact-finder pursuant to the provisions of subsection (b) below, or the mediator appointed, if any, shall not have previously recommended the invocation of fact-finding, the Commission or its named designee shall invoke fact-finding with recommendations for settlement and appoint a fact-finder.

(b) In other circumstances, after the appointment of a mediator and upon his report of a failure to resolve the impasse by mediation, the Commission or its named designee may invoke fact-finding with recommendations for settlement and appoint a fact-finder. The public employer, the employee representative, or the parties jointly, may request the Commission or its named designee, in writing, to invoke fact-finding. An original and four copies of such request shall be filed, and shall be signed and dated and shall contain the following information:

(1) The name, address and telephone number of the public employer who is a party to the collective negotiations, its representative to be contacted and his title, if known;

(2) The name, address and telephone number of the employee representative, its representative to be contacted and his

* A blank form for filing such request will be supplied upon request. Address requests to: Public Employment Relations Commission, Trenton New Jersey 08625.

title, if known;

- (3) The name of the mediator;
- (4) The number and duration of mediation sessions;
- (5) The date of the last mediation effort;
- (6) The unresolved issues to be submitted to a

fact-finder; and

- (7) A statement that the parties have failed to achieve an agreement.

19:12-4.2 Appointment of Fact-Finder

(a) Upon the invocation of fact-finding pursuant to this Subchapter, the Commission or its named designee shall communicate simultaneously to each party an identical list of names of three fact-finders. Each party shall eliminate no more than one name to which he objects, indicate the order of his preference regarding the remaining names, and communicate the foregoing to the Commission or its named designee no later than the close of business on the third working day after the date the list was submitted to the parties. If a party has not so responded within the time specified, all names submitted shall be deemed acceptable. The Commission or its named designee shall appoint a fact-finder giving recognition to the parties' preference. The parties may jointly request the appointment of a particular fact-finder, including the person who was appointed as mediator, if any. Notwithstanding the foregoing provisions, the Commission or its named designee shall have the express reserved authority to appoint a fact-finder without the submission of names to the parties, whenever the same is deemed to best effectuate the

purposes of the Act.

(b) The fact-finder appointed pursuant to this Subchapter may be a member of the Commission, an officer or employee of the Commission, a member of the Commission's fact-finding panel, or any other fact-finder, all of whom shall be considered officers of the Commission for the purpose of assisting the parties to effect a voluntary settlement and/or to make findings of fact and recommend the terms of settlement. If an appointed fact-finder is unable to serve or if for any reason he cannot proceed pursuant to the appointment, another fact-finder shall be appointed. The appointment of a fact-finder pursuant to this Subchapter shall not be reviewable under Chapter 17 of these rules (Request for Review).

19:12-4.3 Fact-Finder's Function

(a) The appointed fact-finder shall, as soon as possible after his appointment, meet with the parties or their representatives, make inquiries and investigations, hold hearings, which shall not be public unless all parties and the fact-finder agree to have them public, and take such other steps as he deems appropriate.

(b) For the purpose of such hearings, investigations and inquiries, the fact-finder shall have the authority and power to subpoena witnesses, compel their attendance, administer oaths, take the testimony or deposition of any person under oath, and in connection therewith, to issue subpoenas duces tecum and to require the production and examination of any governmental or other books or papers relating to any matter under investigation by or in issue before him.

(c) If the impasse is not resolved prior thereto, the fact-finder shall make findings of fact and recommend the terms of settlement as soon after the conclusion of the hearing as possible, except that whenever the fact-finding involves parties to collective negotiations which have or should have commenced pursuant to the provisions of N.J.A.C. 19:12-2.1 (Commencement of Negotiations), the fact-finder shall make findings of fact and recommend the terms of settlement no later than 30 days prior to the public employer's required budget submission date.

(d) Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately and to the Commission or its named designee.

(e) All individually incurred costs shall be borne by the party incurring them. The cost for the services of the fact-finder, including per diem expenses, if any, and actual and necessary travel and subsistence expenses, and any other necessary expenses of the fact-finding proceeding, shall be borne by the Commission.

(f) The parties shall meet within 5 days after receipt of the fact-finder's findings of fact and recommended terms of settlement, in order that statements of position may be exchanged and an opportunity provided for the parties to reach an agreement. In the event of a continuing impasse thereafter, the Commission or its named designee may take whatever steps are deemed expedient to effect a settlement of the impasse.

CHAPTER 13

SCOPE OF NEGOTIATIONS PROCEEDINGS

SUBCHAPTER 1. NATURE OF PROCEEDINGS

19:13-1.1 Nature of Proceedings

N.J.S.A. 34:13A-5.4(d) provides that the Commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The procedure set forth in this Chapter is intended to effectuate that which the Commission views as legislative intent to avoid protracted administrative litigation with respect to disputes which normally will involve solely questions of law and policy. It is accordingly anticipated that scope of negotiations proceedings will normally lend themselves to expeditious disposition on the basis of the parties' submissions, which the procedure set forth in this Chapter is intended to accommodate.

SUBCHAPTER 2. INITIATION OF PROCEEDINGS

19:13-2.1 Who May File

Any public employer or recognized or certified public employee majority representative, either individually or jointly, may initiate scope of negotiations proceedings by filing with the Commission an original and four copies of a Petition for Scope of Negotiations Determination, together with proof of service of a copy of such petition upon the other party to the collective negotiations relationship. A copy of each such petition filed shall be retained in a public docket until the case is closed.

19:13-2.2 Contents of Petition for Scope of Negotiations Determination*

A Petition for Scope of Negotiations Determination shall be in writing and signed, and either shall be sworn to before a person authorized by the laws of this State to administer oaths or shall contain the following dated certification immediately preceding the signature of the person or persons signing it: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment." Such petition shall contain the following:

(a) The full name, address and telephone number of the public employer who is a party to the collective negotiations relationship;

(b) The full name, address and telephone number of the recognized or certified public employee majority representative who

* A blank form for filing such a petition will be supplied upon request. Address requests to: Public Employment Relations Commission, Trenton, New Jersey 08625.

is a party to the collective negotiations relationship;

(c) A clear and concise statement of the matter or matters in dispute concerning which a determination by the Commission is sought; and

(d) A statement that the dispute has arisen:

(1) during the course of collective negotiations, and that one party seeks to negotiate with respect to a matter or matters which the other party contends is not a required subject for collective negotiations; or

(2) with respect to the negotiability of a matter or matters sought to be processed pursuant to a collectively negotiated grievance procedure; or

(3) other than in (1) or (2) above, with an explanation of the circumstances.

SUBCHAPTER 3. PROCEDURE

19:13-3.1 "Petitioner" and "Respondent"

As used in this Subchapter, the term "petitioner" shall refer to the party initiating the proceeding or, in the case of a joint petition, the party contending that the disputed matter is within the scope of collective negotiations; the term "respondent" shall refer to the other party to the proceeding.

19:13-3.2 Intervention

A motion for leave to intervene in proceedings under this Chapter shall be filed in writing with the Commission or its named designee, stating the grounds upon which an interest in the proceeding is claimed and stating the extent to which intervention is sought. An original and nine copies of such motion shall be filed, together with proof of service of a copy of such motion upon the parties. The Commission or its named designee may by order permit intervention to such extent and upon such terms as may be deemed just.

19:13-3.3 Briefs

Within seven days from the filing of a Petition for Scope of Negotiations Determination, the petitioner shall file with the Commission or its named designee an original and nine copies of his brief, together with proof of service of a copy of such brief upon the respondent. Within fourteen days after the service of the petitioner's brief, the respondent shall file with the Commission or its named designee an original and nine copies of his brief, together with proof of service of a copy of such brief upon the petitioner. The petitioner may file with the Commission or its named designee an

original and nine copies of a reply brief within five days after the service of the respondent's brief, together with proof of service of a copy of such reply brief upon the respondent. No other briefs shall be served or filed without leave of the Commission or its named designee. The Commission or its named designee may grant written requests for extension of time within which to file briefs. Such request shall set forth the reasons for the request and the position of the other party regarding the requested extension.

19:13-3.4 Request for Evidentiary Hearing

Any party desiring an evidentiary hearing shall file with the Commission or its named designee an original and nine copies of a written request therefor, together with proof of service of a copy of such request upon the other party. Such request shall either be incorporated in, or shall be filed simultaneously with, the requesting party's first brief filed pursuant to N.J.A.C. 19:13-3.3 (Briefs). Failure to file a timely request for evidentiary hearing shall constitute a waiver of any right to such hearing. Any such request shall set forth in detail the specific factual issues which the requesting party contends are substantial and material disputed factual issues necessitating an evidentiary hearing. Upon the timely filing of such a request, the other party may file with the Commission or its named designee an original and nine copies of a written statement in response to the request, together with proof of service of a copy of such statement upon the requesting party. Such statement shall either be incorporated in, or shall be filed simultaneously with, such party's responsive brief filed pursuant to N.J.A.C. 19:13-3.3

(Briefs).

19:13-3.5 Evidentiary Hearings

(a) If a timely request for evidentiary hearing has been filed pursuant to N.J.A.C. 19:13-3.4 (Request for Evidentiary Hearing), the Commission or its named designee shall issue a notice of hearing in compliance with N.J.S.A. 52:14B-9.

(b) Evidentiary hearings pursuant to this Subchapter shall be conducted by a hearing examiner designated by the Commission or its named designee, unless the Commission or any member thereof presides. Evidentiary hearings conducted pursuant to this Subchapter shall be governed by the provisions of Subchapter 6 (Hearings) of Chapter 14 of these rules (Unfair Practice Proceedings) insofar as applicable.

(c) After completion of the evidentiary hearing, or upon the consent of the parties prior to the conclusion of the evidentiary hearing, the hearing examiner shall prepare a recommended report and decision which shall contain findings of fact, conclusions of law, and recommendations as to what disposition of the case should be made by the Commission. The hearing examiner shall file the original thereof with the Commission, and shall cause a copy to be served upon the parties. Upon service thereof upon the parties, which shall be complete upon mailing, the case shall be deemed transferred to the Commission. The record in the case shall consist of the parties' briefs, the request for evidentiary hearing and any statement filed in response thereto, the notice of hearing, the official transcript of the evidentiary hearing, stipulations, exhibits, documentary evi-

dence, and depositions, together with the hearing examiner's recommended report and decision and any exceptions, cross-exceptions, briefs, and answering briefs filed in response thereto. The filing of any such exceptions, cross-exceptions, briefs, and answering briefs shall be governed by the provisions of N.J.A.C. 19:14-7.3 (Exceptions; Cross-Exceptions; Briefs; Answering Briefs).

19:13-3.6 Oral Argument

Unless an evidentiary hearing has been conducted pursuant to N.J.A.C. 19:13-3.5 (Evidentiary Hearings), proceedings under this Chapter shall be submitted for the Commission's consideration without argument, unless argument is requested by one of the parties within seven days after service of the respondent's brief or is ordered by the Commission or its named designee. Such request shall be made by a separate paper, ten copies of which shall be filed with the Commission, together with proof of service of a copy of such request upon the other party. The Commission or its named designee shall notify the parties of the assigned argument date. The petitioner shall open and conclude argument. The Commission may terminate the argument at any time it deems the issues adequately argued.

19:13-3.7 Final Determination

Based upon the parties' submissions and oral argument, if any, or where an evidentiary hearing has been conducted, based upon the record in the case as set forth in subsection (c) of N.J.A.C. 19:13-3.5 (Evidentiary Hearings), the Commission shall issue and cause to be served upon the parties its findings of fact and conclusions of law, including its determination as to whether the disputed

matter is a required, permissive, or illegal subject for collective negotiations and, where appropriate, an order for remedial or affirmative action reasonably designed to effectuate the purposes of the Act.

CHAPTER 14

UNFAIR PRACTICE PROCEEDINGS

SUBCHAPTER 1. CHARGE

- 19:14-1.1 Who May File
- 19:14-1.2 Where to File
- 19:14-1.3 Form; Contents
- 19:14-1.4 Number of Copies; Service
- 19:14-1.5 Amendment; Withdrawal; Dismissal
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- 19:14-2.1 Contents; Service
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- 19:14-8.1 Action by the Commission
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CHAPTER 14

UNFAIR PRACTICE PROCEEDINGS

SUBCHAPTER 1. CHARGE

19:14-1.1 Who May File

A charge that any public employer or public employee organization has engaged or is engaging in any unfair practice listed in subsections (a) and (b) of N.J.S.A. 34:13A-5.4 may be filed by any public employer, public employee, public employee organization, or their representative.

19:14-1.2 Where to File

Such charge shall be filed with the Commission. Upon receipt, such charge shall be date stamped and assigned a docket number, preceded by a letter designation indicating that the charging party is a public employer (CE), one or more individual public employees (CI), or a public employee organization (CO). A copy of each charge filed shall be retained in a public docket until the case is closed.

*

19:14-1.3 Form; Contents

Such charge shall be in writing and signed, and either shall be sworn to before a person authorized by the laws of this State to administer oaths or shall contain the following dated certification immediately preceding the signature of the person signing it: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are

* A blank form for making a charge will be supplied upon request. Address requests to: Public Employment Relations Commission, Trenton, New Jersey 08625.

wilfully false, I am subject to punishment." Such charge shall contain the following:

(a) The full name, address and telephone number of the public employer, public employee or public employee organization making the charge (the charging party);

(b) The full name, address and telephone number of the public employer or public employee organization against whom the charge is made (the respondent); and

(c) A clear and concise statement of the facts constituting the alleged unfair practice, including, where known, the time and place of occurrence of the particular acts alleged and the names of respondent's agents or other representatives by whom committed and a statement of the portion or portions of the Act alleged to have been violated.

19:14-1.4 Number of Copies; Service

The charging party shall file an original and four copies of such charge, and simultaneously shall serve a copy thereof upon the respondent. Proof of such service shall be filed. The Commission will, as a matter of course, cause a copy of such charge to be furnished to the respondent, but it shall not be deemed to assume responsibility for formal service thereof.

19:14-1.5 Amendment; Withdrawal; Dismissal

The Commission or its named designee may permit the charging party to amend such charge at any time upon such terms as may be deemed just. Filing, service, and proof of service of such amended charge shall conform to the provisions of these rules relating to

the original charge. Any charge may be withdrawn only with the consent of the Commission or its named designee, and upon such withdrawal any complaint based thereon shall be dismissed and the case closed.

19:14-1.6 Investigation

Upon the filing of such charge, the Commission or its named designee shall cause an investigation to be conducted into the matters and allegations set forth therein. The charging party, the respondent, and any intervenor(s) shall present documentary and other evidence, as well as statements of position, relating to the matters and allegations set forth in such charge. The charging party shall have the burden of proffering sufficient evidence to support a prima facie finding of unfair practice.

19:14-1.7 Investigatory Conference

During the course of the investigation conducted pursuant to N.J.A.C. 19:14-1.6 (Investigation), the Commission or its named designee may cause an investigatory conference to be held, which conference shall be attended by all of the parties, either in person or by authorized representative.

SUBCHAPTER 2. COMPLAINT WITH NOTICE OF HEARING

19:14-2.1 Contents; Service

After a charge has been filed, if it appears to the Commission or its named designee prima facie that the respondent has engaged or is engaging in an unfair practice and that formal proceedings in respect thereto should be instituted, the Commission or its named designee shall issue and cause to be served on all parties a formal complaint in the name of the Commission stating the specific unfair practice charged and including a notice of hearing before a hearing examiner at a stated time and place. The complaint with notice of hearing shall also contain:

(a) A clear and concise description of the facts which are claimed to constitute unfair practices, including, where known, the approximate dates and places of such acts and the names of respondent's agents or other representatives by whom committed, and a statement of the portion or portions of the Act alleged to have been violated.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A statement of the time and place of any pre-hearing conference to be held pursuant to N.J.A.C. 19:14-6.2 (Pre-Hearing Conference).

Upon its own motion or upon proper cause shown, the Commission or its named designee may extend the date of such hearing.

19:14-2.2 Amendment; Withdrawal

Any such complaint may be amended at any time by the Commission or its named designee upon such terms as may be deemed just.

Any such complaint may be withdrawn before the hearing by the Commission or its named designee on its own motion.

19:14-2.3 Refusal to Issue or Reissue; Appeal

If, after a charge has been investigated, either prior or subsequent to any investigatory conference held pursuant to N.J.A.C. 19:14-1.7 (Investigatory Conference), the Commission or its named designee declines to issue a complaint, or having withdrawn a complaint pursuant to N.J.A.C. 19:14-2.2 (Amendment; Withdrawal), declines to reissue it, the parties shall be so advised in writing, accompanied by a simple statement of the procedural or other grounds for such action. The charging party may obtain a review of such action by the Commission's named designee, if any, by filing an original and nine copies of an appeal with the Commission within ten days from the service of the notice of such refusal to issue or reissue. A copy shall be served simultaneously upon all other parties, and proof of such service shall be filed with the Commission. An appeal must be a self-contained document enabling the Commission to rule on the basis of its contents. An appeal may not allege any facts not previously presented unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be so presented. Any party may file a statement in opposition to an appeal within five days from the service of the appeal. Such statement in opposition shall be filed and served in like manner as the appeal. The Commission may sustain the refusal to issue or reissue a complaint, stating the grounds of its affirmance, or may direct that further action be taken. The Commission's determination shall be served on all the parties.

SUBCHAPTER 3. ANSWER

19:14-3.1 Time for Filing; Contents; Form

The respondent shall, within ten days from the service of the complaint, file an answer thereto. Upon its own motion or upon proper cause shown, the Commission or its named designee may extend the time within which the answer shall be filed. The respondent shall specifically admit, deny or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation not specifically denied or explained, unless the respondent shall state that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown. The answer shall be in writing and signed, and either shall be sworn to before a person authorized by the laws of this State to administer oaths or shall contain the following dated certification immediately preceding the signature of the person signing it: "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment."

19:14-3.2 Where to File; Number of Copies; Service

An original and nine copies of the answer shall be filed with the Commission. Simultaneously therewith a copy shall be served upon all other parties; and proof of such service shall be filed with the Commission.

19:14-3.3 Amendment

The respondent may amend his answer at any time prior to the hearing. During or after the hearing the answer may, in the discretion of the hearing examiner or the Commission, upon motion, be amended upon such terms and within such periods as may be fixed by the hearing examiner or the Commission. Filing, service, and proof of service of an amended answer shall conform to the provisions of these rules relating to the original answer.

SUBCHAPTER 4. MOTIONS

19:14-4.1 Where to File

All motions for an extension of the date of the hearing, for an extension of time within which the answer shall be filed, or for leave to intervene, made prior to the hearing, shall be filed in writing with the Commission or its named designee. All motions for summary judgment made prior to the hearing shall be filed in writing with the Commission. All motions made at the hearing, or subsequent to the hearing but prior to transfer of the case to the Commission, shall be made in writing to the hearing examiner, or stated orally on the record. All motions made subsequent to transfer of the case to, and while it is pending before, the Commission shall be filed in writing with the Commission.

19:14-4.2 Contents; Number of Copies; Service

All motions, other than those stated orally at the hearing, shall be made in writing, shall briefly state the order or relief applied for, and shall be accompanied by affidavits setting forth the grounds therefor. The moving party shall file an original and nine copies of his motion papers, together with proof of service of a copy thereof upon the other parties.

19:14-4.3 Answering Affidavits

Answering affidavits, if any, shall be served and filed within five days after service of the motion papers. Filing, service, and proof of service of answering affidavits shall conform to the provisions of these rules relating to the motion papers.

19:14-4.4 Rulings

Rulings and orders by the Commission or its named designee on motions shall be issued in writing and a copy served upon each of the parties. Rulings and orders by the hearing examiner, if announced at the hearing, shall be stated orally on the record; in all other cases the hearing examiner shall issue such rulings and orders in writing and shall cause a copy thereof to be served upon each of the parties, or shall make his ruling in his recommended report and decision, provided that whenever the hearing examiner has reserved his ruling and the case is thereafter transferred to and continued before the Commission, the Commission shall rule thereon. Any motion filed prior to the hearing may be referred to the hearing examiner, in which case the parties shall be notified in writing of such reference.

19:14-4.5 Motions and Rulings Part of the Record; Appeal on Special Permission

All motions, rulings and orders shall become part of the record, except that rulings on motions to quash a subpoena shall become a part of the record only upon the request of the party aggrieved thereby. Unless expressly authorized by these rules, rulings and orders by the Commission's named designee, if any, and by the hearing examiner on motions, and by the hearing examiner on objections, shall not be appealed directly to the Commission except by special permission of the Commission, but shall be considered by the Commission in reviewing the record, if exception to the ruling or order is included in the statement of exceptions filed with the Commission pursuant to N.J.A.C. 19:14-7.3 (Exceptions;

Cross-Exceptions; Briefs; Answering Briefs). Requests to the Commission for such special permission to appeal shall be filed in writing within five days from the service of written rulings or statement of oral rulings, as the case may be, and shall briefly state the grounds relied on. An original and nine copies of such request shall be filed with the Commission, and simultaneously a copy shall be served upon each other party and, if the request involves a ruling by a hearing examiner, upon that hearing examiner. Proof of such service shall be filed with the Commission. In the event the Commission grants an appeal on special permission, the proceedings shall not be stayed thereby unless otherwise ordered by the Commission.

19:14-4.6 Motion to Dismiss Complaint; Review

If any motion in the nature of a motion to dismiss the complaint in its entirety is granted by the hearing examiner before filing his recommended report and decision, the charging party may obtain a review of such action by filing an original and nine copies of a request therefor with the Commission, stating the grounds for review and immediately on such filing shall serve a copy thereof upon the other parties. Proof of such service shall be filed with the Commission. Unless such request for review is filed within ten days from the date of the order of dismissal, the case shall be closed.

SUBCHAPTER 5. INTERVENTION

19:14-5.1 Intervention

A motion for leave to intervene shall be filed in writing or, if made at the hearing, made orally on the record, stating the grounds upon which an interest in the proceeding is claimed and stating the extent to which intervention is sought. Filing, service, and proof of service shall conform to Subchapter 4 (Motions) of this Chapter. The Commission or its named designee, or the hearing examiner, as the case may be, may by order permit intervention to such extent and upon such terms as may be deemed just.

SUBCHAPTER 6. HEARINGS

19:14-6.1 Who Shall Conduct; To Be Public Unless Otherwise Ordered

The hearing for the purpose of taking evidence upon a complaint shall be conducted by a hearing examiner designated by the Commission or its named designee, unless the Commission or any member thereof presides. At any time a hearing examiner may be designated by the Commission or its named designee to take the place of the hearing examiner previously designated to conduct the hearing. The hearing shall be public unless otherwise ordered by the Commission or the hearing examiner.

19:14-6.2 Pre-Hearing Conference

The hearing examiner assigned to conduct such hearing, or an alternate designee, may hold a pre-hearing conference for the purpose of clarification of issues. All of the parties shall attend any such pre-hearing conference, either in person or by authorized representative.

19:14-6.3 Duties and Powers of Hearing Examiner

It shall be the duty of the hearing examiner to hear fully the facts as to whether the respondent has engaged or is engaging in an unfair practice as set forth in the complaint or amended complaint. The hearing examiner shall have authority, with respect to cases assigned to him, between the time he is designated and transfer of the case to the Commission, subject to these rules and the Act:

- (a) To administer oaths and affirmations;
- (b) To grant applications for subpoenas;
- (c) To rule upon motions to quash subpoenas;
- (d) To rule upon offers of proof and receive relevant evidence;

- (e) To take or cause to be taken depositions whenever the ends of justice would be served thereby;

- (f) To regulate the course of the hearing, and if appropriate or necessary, to exclude persons or counsel from the hearing for contemptuous conduct and to strike all related testimony of witnesses refusing to answer any proper question;

- (g) To hold conferences for the settlement or simplification of the issues;

- (h) To dispose of procedural requests, motions, or similar matters, including pre-hearing motions referred to him and motions for summary judgment or to amend pleadings; also to dismiss complaints or portions thereof; to order hearings reopened; and upon motion order proceedings consolidated or severed prior to issuance of his recommended report and decision;

- (i) To approve a stipulation voluntarily entered into by all parties which will dispense with a verbatim written transcript of record of the oral testimony adduced at the hearing, and which will also provide for the waiver by the respective parties of their right to file with the Commission exceptions to the findings of fact (but not to conclusions of law or recommended order) which the hearing examiner shall make in his recommended report and decision;

- (j) To make and file recommended reports and decisions in

conformity with N.J.S.A. 52:14B-10;

(k) To request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;

(l) To take any other action necessary under the foregoing and authorized by these rules.

19:14-6.4 Unavailability of Hearing Examiner

In the event the hearing examiner designated to conduct the hearing becomes unavailable to the Commission after the hearing has been conducted and before the filing of his recommended report and decision, the Commission may transfer the case to itself for the purposes of further hearing or issuance of a proposed decision and order on the record as made, or both, or may cause the designation of another hearing examiner for such purposes.

19:14-6.5 Rights of Parties

Any party shall have the right to appear at such hearing in person or by authorized representative to call, examine, and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent permitted by the hearing examiner. Ten copies of documentary evidence shall be submitted, unless the hearing examiner permits a reduced number of copies upon good cause shown.

19:14-6.6 Rules of Evidence Not Controlling

The parties shall not be bound by rules of evidence whether

statutory, common law, or adopted by the Rules of Court. All relevant evidence is admissible, except as otherwise provided herein. The hearing examiner may in his discretion exclude any evidence if he finds that its probative value is substantially outweighed by the risk that its admission will either necessitate undue consumption of time or create substantial danger of undue prejudice or confusion. The hearing examiner shall give effect to the rules of privilege recognized by law. Notice may be taken of judicially noticeable facts. In addition, notice may be taken of generally recognized facts within the Commission's specialized knowledge. The material noticed shall be referred to in the hearing examiner's recommended report and decision, and any party may contest the material so noticed by filing timely exceptions thereto pursuant to N.J.A.C. 19:14-7.3 (Exceptions; Cross-Exceptions, Briefs; Answering Briefs).

19:14-6.7 Stipulations of Fact

In any such proceeding stipulations of fact may be introduced in evidence with respect to any issue. The parties may submit a stipulation of facts to the Commission for a decision without a hearing.

19:14-6.8 Prosecution by Charging Party; Burden of Proof

In any such proceeding, the charging party either in person or by authorized representative shall prosecute the case and shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

19:14-6.9 Objection to Conduct of Hearing

Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence, may be stated orally or in writing, accompanied by a short statement of the grounds for such objection, and included in the record. No such objection shall be deemed waived by further participation in the hearing.

19:14-6.10 Oral Argument at Hearing; Briefs; Proposed Findings

Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the hearing examiner who may fix a reasonable time for such filing. Requests for extensions of time for good cause shown shall be made to the hearing examiner. No request will be considered unless received at least three days prior to the expiration of the time fixed for the filing of briefs or proposed findings and conclusions, unless expressly authorized by the hearing examiner. Notice of the request for an extension shall be served simultaneously upon all other parties, and proof of service shall be furnished. Five copies of any brief or proposed findings and conclusions shall be filed with the hearing examiner, copies shall be served on the other parties, and proof of service shall be furnished.

19:14-6.11 Continuance or Adjournment

In the discretion of the hearing examiner, the hearing may be continued from day to day, or adjourned to a later date or to a different place, by announcement thereof at the hearing by the hearing examiner, or by other appropriate notice to the parties.

19:14-6.12 Misconduct at Hearing

Misconduct at any hearing before a hearing examiner or before the Commission shall be ground for summary exclusion from the hearing. Such misconduct of an aggravated character, when engaged in by a representative of a party, shall be ground for suspension or disbarment by the Commission from further practice before it after due notice and hearing.

SUBCHAPTER 7. HEARING EXAMINER'S DECISION AND TRANSFER
OF CASE TO THE COMMISSION

19:14-7.1 Hearing Examiner's Decision; Transfer of Case
to the Commission

After the hearing for the purpose of taking evidence upon a complaint, or upon the consent of the parties prior to the conclusion of the hearing, the hearing examiner shall prepare a recommended report and decision which shall contain findings of fact, conclusions of law, and recommendations as to what disposition of the case should be made including, where appropriate, a recommendation for such affirmative action by the respondent as will effectuate the policies of the Act. The hearing examiner shall file the original thereof with the Commission, and shall cause a copy to be served upon the parties. Upon service thereof upon the parties, which shall be complete upon mailing, the case shall be deemed transferred to the Commission.

19:14-7.2 Record in the Case

The record in the case shall consist of the charge and any amendments thereto, the complaint and any amendments thereto, notice of hearing, answer and any amendments thereto, motions, rulings, order, official transcript of the hearing, stipulations, exhibits, documentary evidence, and depositions, together with the hearing examiner's recommended report and decision and any exceptions, cross-exceptions, briefs, and answering briefs.

19:14-7.3 Exceptions; Cross-Exceptions; Briefs; Answering Briefs

(a) Within ten days, or within such further period as the

Commission may allow, from the date of the service of the hearing examiner's recommended report and decision, any party may file with the Commission an original and nine copies of exceptions to such recommended report and decision or to any other part of the record or proceedings (including rulings upon motions or objections), together with an original and nine copies of a brief in support of the exceptions. Any party may, within the same period, file an original and nine copies of a brief in support of the recommended report and decision. Requests for extension of time to file exceptions or briefs shall be in writing and copies thereof shall be served simultaneously upon the other parties and proof of such service furnished. Such requests must be received by the Commission no later than three days prior to the due date.

(b) Each exception shall set forth specifically the questions of procedure, fact, law, or policy to which exception is taken; shall identify that part of the recommended report and decision to which objection is made; shall designate by precise citation of page the portions of the record relied on; and shall state the grounds for the exception and shall include the citation of authorities unless set forth in a supporting brief. Any exception which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded.

(c) Any brief in support of exceptions shall contain no matter not included within the scope of the exceptions and shall contain the points of fact and law relied on in support of the posi-

tion taken on each question, with specific page reference to the transcript and the legal or other material relied on.

(d) Within five days, or such further period as the Commission may allow, from the last date on which exceptions may be filed, a party opposing the exceptions may file an original and nine copies of an answering brief, which shall be limited to the questions raised in the exceptions and in the brief in support thereof. Filing, service, and proof of service of requests for extension of time shall conform to the provisions of subsection (a) relating to requests for extension of time.

(e) Any party who has not previously filed exceptions may, within five days, or such further period as the Commission may allow, from the last date on which exceptions may be filed, file an original and nine copies of cross-exceptions to any portion of the recommended report and decision, together with a supporting brief, in accordance with the provisions of subsection (b).

(f) Within five days, or such further period as the Commission may allow, from the last date on which cross-exceptions may be filed, any other party may file an original and nine copies of an answering brief in accordance with the provisions of subsection (c), limited to the questions raised in the cross-exceptions. Filing, service, and proof of service of requests for extension of time shall conform to the provisions of subsection (a) relating to requests for extension of time.

(g) No further briefs shall be filed except by special leave of the Commission. Requests for such leave shall be in writing,

accompanied by proof of service upon the other parties.

(h) No matter not included in exceptions or cross-exceptions may thereafter be urged before the Commission, or in any further proceeding.

SUBCHAPTER 8. PROCEDURE BEFORE THE COMMISSION

19:14-8.1 Action by the Commission

Upon receipt of the record, the Commission shall adopt, reject or modify the hearing examiner's recommended report and decision. The Commission may decide the matter forthwith upon the record, or after oral argument, or may reopen the record and receive further evidence before the entire Commission, a member or members thereof, or other designated officer.

19:14-8.2 Oral Argument

Should any party desire permission to argue orally before the Commission, request therefor must be made in writing to the Commission simultaneously with the statement of any exceptions or cross-exceptions filed pursuant to N.J.A.C. 19:14-7.3 (Exceptions; Cross-Exceptions; Briefs; Answering Briefs) together with proof of service thereof upon the other parties. The Commission shall notify the parties of the time and place of oral argument, if such permission is granted.

19:14-8.3 Hearings Before the Commission

Whenever the Commission deems it necessary in order to effectuate the purposes of the Act or to avoid unnecessary costs or delay, it may, at any time after issuance of a complaint, order that such complaint and any proceeding which may have been instituted with respect thereto be transferred to and continued before it or any member or members of the Commission. In such case, the provisions of this Chapter shall govern insofar as applicable.

19:14-8.4 Settlement or Adjustment of Issues

All interested parties shall have opportunity to submit to the Commission or its named designee, for consideration, facts, arguments, offers of settlement, or proposals of adjustment.